No. 230

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IN THE

United States Court of Appeals

FOR THE THIRD CIRCUIT.

Nos. 12267, 12268, 12269, 12270 and 12289.

ROY J. UNDERWOOD,
Appellant in Nos. 12267, 12269,

v.

WILLIAM E. MALONEY, Individually and as representative of The International Union of Operating Engineers.

HOMER DAWSON, GERARD LEONE, JAMES RUSSELL, ROBERT WALSH, COLOMBO ACCHIONE, EDMOND FARMER, MICHAEL CONCORDIA, NORMAN GALE, STANLEY KOSIOREK, GERALD GILROY, JOSEPH MARTIN and CLARENCE SWEENEY, in Their Own Behalf and on Behalf of All Members of Local 542 and Its Branches 542-A, 542-B and 542-C of The International Union of Operating Engineers,
Appellants in Nos. 12268, 12270.

v.

WILLIAM E. MALONEY and HUNTER D. WHARTON, Individually and as Representatives of and on Behalf of The International Union of Operating Engineers,
Appellees in Nos. 12268, 12270,
Appellants in No. 12289.

APPEALS FROM THE ORDERS OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

APPENDIX FOR APPELLEES IN NOS. 12267 TO 12270 INCLUSIVE AND APPELLANTS IN NO. 12289.

VOL. I (Pages 1b to 362b, inclusive)

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DOCKET ENTRIES.

1952

Dec. 8. Complaint filed.

Dec. 8. Summons exit.

Dec. 15. Summons returned: "On Dec. 8, 1952 served," and filed.

Dec. 29. Defendants' motions (3) to dismiss filed.

1953

Jan. 7. Praecipe to issue alias summons filed.

Jan. 7. Alias summons exit.

Jan. 14. Amendment to Complaint filed.

Jan. 15. Alias Summons returned: "On Jan. 15, 1953 served on William E. Maloney, individually etc.; and filed.

Jan. 19. Argued sur Motion to Dismiss. CAV.

May 7. Opinion Clary, J., denying motion to dismiss etc. filed.

May 7. Order of Court denying motions to dismiss, granting motions to strike complaint with leave to file amended Complaint within 20 days filed. Noted and Notice mailed 5-8-53.

May 27. Amended Complaint filed.

May 28. Notice of taking deposition of William E. Maloney filed. (#14398)

June 2. Stipulation and Order extending time for filing answer to Amended Complaint, etc.; to 6-16-53, filed. 6-3-53 noted.

June 16. Motion for redress against defendants for failure to make discovery. (Filed 14398)

June 16. Hearing sur motion for redress.

Eo Die: The Court directs counsel to continue with depositions.

June 16. Motion of defendants to dismiss amended complaint filed.

June 18. Transcript of hearing of June 16, 1953 filed. (See #14398)

July 22. Deposition of Wm. E. Maloney filed. (2 Vols. See 14398.

July 22. Plaintiff's motion for judgment under Rule 37, filed. C. A. 14398.

July 22. Defendants' motion to vacate plaintiffs' notice of oral examination etc. filed. (See C. A. 14398)

July 23. Hearing sur Plaintiff's motion for judgment and sur Defendant's motion to vacate Plaintiff's notice of oral examination. Order dictated to Reporter—to be effective when filed.

July 27. Transcribed Order of Court sur taking of oral depositions, filed. 7-28-53 noted and notice mailed.

July 31. Transcript of 7-22-53 filed.

July 31. Transcript of 7-23-53 filed. (Filed in #14398)

Sept. 9. Supplemental affidavit in support of motion to dismiss Amended Complaint filed.

Sept. 14. Argued sur motion to dismiss Amended Complaint. CAV.

Sept. 24. Order denying motion to dismiss Amended Complaint, or in the alternative, to strike all or certain paragraphs of said Amended Complaint filed 9-25-53. Noted and notice mailed.

Oct. 5. Answer to Amended Complaint filed and demand for jury trial filed.

Oct. 13. Order to place case on trial list filed.

Oct. 22. Motion for Order vacating Plaintiffs' notice of taking depositions of Alfred R. Loss, et al. filed. (Filed in 14398.)

Oct. 22. Motion for Order vacating Plaintiffs' Notice of taking Depositions of Victor S. Swanson, et al. filed. (Filed in 14398.)

Oct. 22. Motion for Order vacating Plaintiffs' Notice of taking Depositions of Joseph S. Fay filed. (Filed in 14398.)

Oct. 23. Plaintiffs' Answer to Defendants' Motion to Va-

cate and set aside Plaintiff's Notice of taking depositions of John J. McDonald and Victor S. Swanson, filed. (Filed in 14398.)

Oct. 23. Plaintiffs' Answer to Defendants' Motion to vacate Plaintiffs' Notice of taking Depositions of Alfred R. Loos, et al.; filed. (Filed in 14398.)

Oct. 23. Plaintiffs' Answer to Defendants' Motion to vacate Plaintiffs' Notice of taking Depositions of Joseph S. Fay, filed. (Filed in 14398.)

Nov. 3. Hearing sur defendants' Motion for Order vacating Plaintiffs' Notice of taking depositions.

Nov. 3. Transcript of Testimony of William M. Maloney taken before trial, filed.

Nov. 5. Order denying defendant's motion, without prejudice, to vacate and set aside plaintiff's notice of taking depositions of Joseph S. Fay; costs to await further hearing, filed. 11-6-53 Noted and Notice mailed.

Nov. 5. Order granting defendant's motion, without prejudice, to vacate and set aside plaintiff's notice of taking depositions of Alfred R. Loss, et al., filed. 11-6-53 noted and notice mailed.

Nov. 5. Order dismissing motion of defendant, without prejudice, to set aside and vacate plaintiff's notice of taking depositions of Victor S. Swanson, et al.; costs of taking depositions to await further motion and hearing, filed. 11-6-53 noted and notice mailed.

Dec. 1. Transcript of Nov. 3, 1953 filed. (Filed in 14398.)

Dec. 4. Order amending Order of 11-5-53, and denying motion of defendant to vacate and set aside notice of taking depositions of Joseph S. Fay, filed. 12-7-53 noted and notice mailed.

Dec. 31. Transcript of Meeting in re production and identification of documents in accordance with Order of 7-27-53 filed. 2 Vols.)

Dec. 31. Deposition of Victor S. Swanson filed.

Dec. 31. Deposition of Victor S. Swanson and John J. McDonald filed.

Dec. 31. Transcript of further identification of exhibits filed.

1954

Jan. 25. Petition for and Rule to show cause why William E. Maloney should not be held in contempt—rule returnable March 22, 1954 filed. (C. A. 14398.)

Feb. 16. Deposition of Joseph S. Fay, filed. (C. A. 14398.)

Feb. 26. Petition of plaintiffs for protective order under Rule 30 filed.

Mar. 8. Answer of William E. Maloney to petition for attachment for contempt etc.; filed. (C. A. 14398.)

Mar. 8. Answer to plaintiffs' petition for protective order filed. (C. A. 14398.)

Mar. 22. Hearing sur rule to hold defendant in contempt and sur plaintiff's motion for protective order. (#14398) CAV.

July 28. Opinion, Clary, J., sur motion to hold defendant in contempt and sur motion for protective order, filed.

July 28. Order of Court denying motion to hold defendant in contempt, and for judgment granting to a limited extent plaintiff's motion for protective order; and directing that plaintiffs' costs in taking discovery deposition of Wm. E. Maloney be paid by defendant, filed. 7-29-54 noted and notice mailed.

Nov. 19. Plaintiffs' notice of taking depositions of George Meany, filed. (#14398)

Dec. 10. Deposition of George Meany, filed. (See #14398.)

1955

Feb. 1. Transcript of further examination Nov. 30, 1954 of Wm. E. Maloney, filed. (See #14398.)

Mar. 3. Motion of plaintiff for preliminary injunction and Order of Court granting rule on defendants to show cause why injunction should not issue, filed, returnable 3-4-55. (See #14398) 3-4-55 noted.

Mar. 4. Hearing sur Motion for Preliminary Injunction. CAV.

Mar. 4. Order granting temporary injunction against William E. Maloney, and Hunter P. Wharton, ind. etc.; filed. 3-7-55 noted and notice mailed. Bond to be entered by Plaintiffs in the sum of $2000.

Mar. 4. Preliminary injunction bond in $2000. with U. S. Fidelity and Guaranty Co. as surety filed. (C. A. 14398.)

Mar. 22. Transcript of hearing on motion for preliminary injunction filed. (C. A. 14547.)

Sept. 29. Plaintiff's notice of taking deposition of J. Howard McGrath, filed. (C. A. #14398.)

Nov. 7. Defendants' motion for and notice of motion to compel Roy J. Underwood to answer certain questions on deposition and to compel production of certain documents, etc. filed.

Dec. 13. Motion to compel defendants Maloney, et al. to answer certain questions on oral examination, etc.; filed. (#14398)

Dec. 13. Petition by Plaintiff for counsel fee and expense pursuant to Order of Court dated July 28, 1954, filed. (#14398)

Dec. 13. Pretrial hearing. (Transcript of hearing to the Order.)

Dec. 20. Transcript of hearing of 12-13-55, filed. (#14398)

1956

Jan. 12. Order denying plaintiff's motion for production of William E. Maloney's Income Tax Return for 1952 filed. 1-13-56 noted and notice mailed.

Mar. 28. Pre-trial hearing. (Chambers)

Apr. 3. Transcript of Pre-trial hearing filed. (Filed in 14398.)

May 2. Order directing Plaintiffs, within 15 days from this date, to identify the specific members of the Union who constitute the representative group in this class action, filed. 5-3-56 noted and notice mailed.

May 29. Transcript of testimony. (12 vols.) filed (#14398)

June 18. Hearing sur motion for protective order. (Transcript to be filed.)

June 18. Appearance of Cornelius C. O'Brien, Jr., Esq. for defendants filed.

June 20. Transcript of hearing of 6-18-56 (in Chambers) filed. (#14398)

June 27. Transcript of hearing 6-21-56 (in Chambers) filed. (#14398)

July 3. Deposition of Roy J. Underwood filed (Filed in 14398 (6-12-56).

July 3. Deposition of Roy J. Underwood filed (Filed in 14398) (6-20-56).

Aug. 30. Deposition of Harry R. Halloran, filed. (Filed in 14398.)

Aug. 30. Motion to compel Harry R. Halloran to answer questions filed. (Filed in 14398.)

Aug. 30. Pre-trial hearing.

Aug. 30. Deposition of J. H. McGrath (continued) filed. (Filed in 14398.)

Sept. 18. Answer of Harry R. Halloran to Plaintiffs' Motion to compel Harry R. Halloran, a witness, to answer questions. (See 14398 Civil.)

1957

Feb. 4. Trial—witnesses sworn.

Feb. 5. Trial resumed.

Feb. 6. Trial resumed.

Feb. 7. Trial resumed.

Feb. 11. Trial resumed.

Feb. 12. Trial resumed.

Feb. 13. Trial resumed.

Feb. 14. Trial resumed.

Feb. 25. Trial resumed.

Feb. 26. Trial resumed.

Feb. 27. Trial resumed.

Feb. 28. Trial resumed.

Mar. 4. Trial resumed.

Mar. 5. Trial resumed.

Mar. 6. Trial resumed.
Mar. 7. Trial resumed.
Mar. 11. Trial resumed.
Mar. 12. Trial resumed.
Mar. 18. Trial resumed.
Mar. 18. Motion by defendants to dismiss filed.
Mar. 18. Motion of defendants to strike portions of plaintiffs' evidence filed. (C. A. 14398.)
Mar. 19. Trial resumed.
Mar. 20. Trial resumed.
Mar. 27. Transcript of 3-22-57 filed. (C. A. No. 14398.)
Apr. 23. Trial resumed
May 3. Testimony filed. (23 vols.) (See C. A. #14398.)
May 3. Argued sur P & P.
May 6. Transcript of testimony 5-3-57 filed. (C. A. #14398.)
May 15. Consolidated index of witnesses and exhibits, filed. (C. A. #14398.)
May 23. Plaintiffs' requests for findings of fact and conclusions of law, filed (#14398.)
May 23. Defendants' requests for findings of fact and conclusions of law, filed (#14398).
May 23. In open Court opinion sur P & P rendered orally.
May 23. Order of Court granting prayer of plaintiffs to set aside Order of supervision without prejudice and denying all other of plaintiffs' requests for relief filed. 5-24-57 noted and notice mailed.
May 23. Order dissolving temporary injunction entered 3-4-55 filed (#14398).
May 31. Plaintiffs' exceptions to findings, conclusions and statements rendered orally by the Court, filed.
May 31. Plaintiffs' Notice of Appeal, filed.
May 31. Copy of Clerk's Notice to U. S. Court of Appeals, filed.
June 3. Plaintiffs' notice of appeal (from Order dissolving temporary injunction), filed. (#14398)
June 3. Copy of Clerk's Notice to U. S. Court of Appeals, filed. (#14398)

Answer to Amended Complaint [in Civil Action No. 14398]

June 6. Record transmitted to U. S. Court of Appeals.
June 6. Findings of Fact, Conclusions of Law and Opinion of Court, Clary, J., filed. Noted 6-6-57.
June 6. Supplemental record transmitted to U. S. Court of Appeals.
June 11. Transcript of proceedings on June 7, 1957, filed. (#14398)
June 12. Supplemental record transmitted to U. S. Court of Appeals.
June 12. Certified copy of Order of U. S. Court of Appeals granting injunction and requiring bonds of $2,000.00 each, filed (#14398).
June 14. Plaintiff's injunction bond in $2000. with United States Fidelity & Guaranty Co., surety, approved and filed (#14398).
June 20. Defendant's Notice of Appeal, filed. (6-21-57 copy of notice to Freedman, Landy & Lorry.)
June 20. Copy of Clerk's Notice to U. S. Court of Appeals, filed.
June 20. Defendants' bond for costs on appeal in the sum of $250. with the Fidelity & Deposit Co. of Md. as surety, filed.
June 25. Supplemental record transmitted to U. S. Court of Appeals.
June 25. Defendants' injunction bond in $2000. with Indemnity Insurance Company of North America as surety, approved and filed. (#14398.)

ANSWER TO AMENDED COMPLAINT [IN CIVIL ACTION NO. 14398].

The defendant above named, "William E. Maloney, Individually and as Representative of the International Union of Operating Engineers", by his attorney, makes answer to the Amended Complaint in the above matter as follows:

Answer to Amended Complaint [in Civil Action No. 14398]

Wherever in this Answer it is alleged that the defendant does not know the truth or falsity of an allegation of the plaintiff or where an allegation is denied for lack of sufficient information, such averment is intended to have the meaning, without repetition, that the defendant is without knowledge or information sufficient to form a belief as to the truth of the corresponding averment of the Amended Complaint.

FIRST DEFENSE.

1. It is admitted that the plaintiff is a citizen of the Commonwealth of Pennsylvania. The remaining allegations of the Amended Complaint are denied.

2. Admitted, except that the provisions, meaning and effect of the Charter of said Local Union speak for themselves, and the provisions thereof are in all respects subject to each and all of the provisions of the Constitution of the International Union of Operating Engineers.

3. Admitted.

4. Admitted.

5. It is admitted that the plaintiff was elected as alleged in March 1948 and in June 1949 for one year terms respectively, as President and Business Manager of said Local Union. It is further averred that the purported re-election of Plaintiff in June 1950 for a term of four years was void and in violation of the provisions of the said Charter and Constitution of the International Union of Operating Engineers.

6. Defendant denies that during the entire period of plaintiff's tenure in office, plaintiff managed the affairs of the

Union in a highly satisfactory and successful manner, and conducted himself in all respects in full accord with the law and in the best interests of the Union and the membership.

7. It is admitted that shortly prior to May 1, 1952, Local 542 effected a new agreement with certain employers to replace the existing collective bargaining agreement, and that no agreement was then effected with the remaining employers in the Local Union's geographical area, and that a strike was called against the latter group. Defendant does not know the truth or falsity of the allegation that the contract so negotiated was executed by "the majority of employers" and that the employers with whom no contract was negotiated constituted "a small minority of employers".

8. Defendant is without sufficient information to admit or specifically deny the allegations of paragraph 8, and therefore demands proof thereof if deemed material.

9. It is averred that the International Union first had knowledge of the strike some time after it had been called. It is further averred, however, that the calling of said strike was in direct violation of the express provisions of Article XXIII, Subdivision 11, Sections (a) and (c) of the International Union in that the same was never authorized or sanctioned by the General President of the International Union.

10. The defendant does not know the truth or falsity of the allegations that the said strike had been successfully carried on for a number of weeks and that various attempts had been made by employers to break the strike, and if material to this cause demands proof thereof. Defendant denies that any representatives of the employers at any

time improperly influenced him, or attempted so to do, to use his authority and office for the purposes alleged in paragraph 10 of the Amended Complaint. On the contrary after the strike had been in effect for many days, defendant as General President of the International Union received an appeal for action on his part from the Governor of the State of Pennsylvania, and numerous complaints from many sources of widespread dissension within the Local Union over the continuance of the strike and the conduct of the plaintiff with respect thereto, and the effect thereof upon the prestige of the International and Local Unions in the area and upon many millions of dollars worth of public and private construction. Each and every action taken by defendant in the premises was influence and motivated solely by the conclusion of defendant, as General President of the International Union, that such action was in the best interests of the International and Local Unions and their members, and of the public.

11. It is denied that the defendant brought any pressure of any nature to bear upon plaintiff pursuant to any understanding of any nature with employer representatives. It is further denied that defendant ever directed or suggested to plaintiff the abandonment of the Union's demands in the premises or the termination of the strike in an improper manner.

12. Denied as averred. It is admitted that defendant directed the calling of a meeting of the Local Union and directed that said meeting be notified of the defendant's position concerning the issues.

13. Denied as averred. It is admitted, however, that a meeting of the Local Union was held on August 5, 1952 and that the persons in attendance at said meeting voted to continue the strike.

14. Denied as averred. It is admitted however that the letter a copy of which is attached to the Amended Complaint as Exhibit 2-C was signed by General Vice President McDonald and mailed, but it is averred upon information and belief that said letter was not written by said General Vice President McDonald but was composed and dictated by the attorney for plaintiff in this case.

15. Denied as averred. Defendant has no knowledge as to the truth or falsity of the allegations concerning the arrangement of a meeting with certain of the employers or the cancellation of such alleged meeting. It is denied that the defendant at any time was a party to any conspiracy of any nature with any employer representatives or that he ever acted in any respect pursuant to any such alleged conspiracy. It is admitted that the defendant duly issued the Order and Instructions a copy of which are attached to the Amended Complaint as Exhibit 2-D, and avers that the same was properly issued by him as General President of the International Union in full accord with the authority vested in him so to do under the Constitution of the International Union and the Charter of the Local Union. It is denied that said Order was in any respect a violation of the International Constitution and it is denied that the said Local had the right to make its own contracts and to carry on said strike in violation of said Instructions and Order of the defendant as General President of the International Union.

16. Denied as averred. It is admitted that the Executive Board of the Local Union, acting under the domination and control of the plaintiff and his counsel, defied the said Instructions and Order of the defendant, and that the plaintiff thereupon instituted action in this Court as of Civil Action No. 14071 in an effort, inter alia, to enjoin enforcement of said Instructions and Order of the defendant.

Answer to Amended Complaint [in Civil Action No. 14398]

17. Admitted, except that it is denied, as more fully hereinafter set forth, that said action was filed for the purpose of obtaining a declaratory judgment. It is further denied upon information and belief, that the said civil action was instituted pursuant to said alleged resolution of the Executive Board of the Local Union. On the contrary it is averred upon information and belief, that the Complaint in said case was prepared prior to the adoption of the said alleged resolution of the Executive Board of the Local Union.

18. Admitted, except that the Order Invoking International Supervision, a copy of which is attached to the Amended Complaint as Exhibit 2-E, speaks for itself as to the action taken in the premises by defendant as General President of the International Union. As expressly stated therein, the Order was issued for the purpose of conserving the assets of the Local Union to be administered:

> "as a trust solely for the benefit of the membership to the end that the rights of members will be protected; their property safeguarded; their affairs administered with fairness and in a businesslike manner, and that the Constitution, Laws, customs, Ritual and authority be recognized and enforced by the membership."

And said Order further specifically provided for a hearing thereon, which was duly held on August 26, 1952, and was attended by plaintiff and other representatives of the local Union. A true and correct copy of the Report of the Hearing Officer who conducted said hearing is attached hereto, made a part hereof, and marked Exhibit "A".

19. Admitted. It is further averred that said charges against plaintiff were filed, as will appear upon reference to Exhibit 1 attached to the Amended Complaint, by one William E. Carter, the Hearing Officer who had been duly appointed to conduct the hearing upon the above-mentioned

Order Invoking International Supervision. The said charges were based upon the facts developed by evidence presented at said hearing.

20. It is admitted that Exhibit 2 attached to the Amended Complaint is a copy of the Answer filed on behalf of plaintiff to said charges. It is further averred that the institution by plaintiff of said action in this Court entitled Civil Action No. 14071, as well as the institution of the instant suit, was a flagrant violation by plaintiff of the express terms of the Constitution of the International Union, and was also a flagrant violation of plaintiff's written agreement entered into upon his application for membership in the Union, in which plaintiff agreed, inter alia, that he would:

> "* * * not violate any of the provisions of the Constitution * * *. I further agree in the event of a claimed grievance against the Union to faithfully observe the procedure of and fully accept as final the findings of the Trial Boards within the Order; and I hereby expressly waive any right to institute proceedings in any Court of law or equity against the Union; * * *.".

21. It is admitted that the charges against plaintiff were heard by the General Executive Board of the International Union on September 17, 1952. Each and all of the remaining averments of paragraph 21 of the Amended Complaint are denied, except that it is admitted a unanimous decision was reached by said Board, but with defendant Maloney abstaining from participating therein, the terms of which speak for themselves. It is further averred that under the Constitution, Laws and Ritual of the International Union complainants and defendants at hearings before the Union's tribunals may present their own cases or by counsel selected from among the membership of the International Union and no parties to such proceedings are permitted to be repre-

sented by counsel who are not Union members. The said hearing was in all respects conducted in accordance with the Union Constitution and Laws and with every requirement of due process, and plaintiff was afforded the opportunity of producing any and all witnesses and evidence available to him, and he voluntarily admitted at the conclusion of said hearing, that he had received a full and fair trial. The consideration and decision of the General Executive Board upon said charges was entirely free and inuependent and in no respect was the said Board or any of the members thereof dominated, controlled, coerced or influenced by defendant. The proceedings before said Board were fully reported in the decision of said Board, as will appear upon reference thereto, a copy of which is attached to the Amended Complaint as Exhibit 3, and it was reported and published in one of the regular publications of the International Union a copy of which is regularly forwarded to each of the members of the Union.

22. Denied as averred. The provisions of said decision were as specifically set forth therein (see Exhibit 3 attached to the Amended Complaint). The defendant, although a member of the General Executive Board did not take part in the said Board's deliberation or decision. It is further averred that the said opinion was based solely upon the facts and evidence adduced at the said hearing, and that the said decision is fully in accord with said facts and evidence and is in no respect contrary to law.

23. Each and all of the averments of paragraph 23 of the Amended Complaint are specifically denied, as more fully hereinabove set forth.

24. Denied as averred. It is denied that plaintiff lost any property rights or any interest he may have had in the assets of Local 542, or any benefits from various funds and

projects as the result of said decision. It is further averred that plaintiff's right to work and earn a livelihood was preserved by said decision, which expressly provided that his suspension from membership should be changed merely to a period of probation upon his payment of the fine imposed upon him automatically by Article XVII, Section 3 of the International Constitution of which plaintiff himself was a sponsor.

25. Admitted, except that plaintiff's said election was improper and contrary to the provisions of the Union Constitution, Laws and Ritual as hereinabove more specifically averred.

26. Denied as averred. It is further denied that plaintiff has sustained any damage whatsoever as the result of any improper action on the part of the defendant.

SECOND DEFENSE.

27. It is further averred that defendant, William E. Maloney, is a citizen of the State of Illinois, that his office and usual place of business is at 1003 K Street, Washington, D. C., that he has no office or place of business in the City and County of Philadelphia or in the State of Pennsylvania, that no service of the Complaint in this case was made upon him nor upon any agent authorized by appointment or by law to accept service on his behalf, either individually or as representative of the International Union of Operating Engineers.

28. It is further averred that this Court therefore has no jurisdiction over the defendant, William E. Maloney, either individually or as representative of the International Union of Operating Engineers, and that the return of service in

this case should be quashed and the action should be dismissed.

THIRD DEFENSE.

29. Following the issuance of the said Decision and Order of the General Executive Board, a copy of which is attached to the Amended Complaint as Exhibit 3, plaintiff was duly notified by letter dated September 26, 1952 from the General Secretary-Treasurer of the International Union, of his right to request a rehearing in the matter of the said Charges against him. A true and correct copy of said letter is attached hereto, made a part hereof and marked Exhibit "B".

30. Plaintiff ignored and failed to pursue the said remedy or any other remedy of appeal available to him under the Constitution, Laws and Ritual of the International Union.

31. In accordance with well established legal principles, Courts do not entertain jurisdiction of the subject matter of an internal union dispute unless the claimant has first exhausted all his remedies in the tribunals of his organization as provided by its Constitution and general laws.

Wherefore plaintiff is estopped to assert the alleged cause of action set forth in the Amended Complaint, and this action should also be dismissed for lack of jurisdiction of the subject matter.

FOURTH DEFENSE.

32. The written application for membership in the Union which was signed by the plaintiff, and is a presently con-

tinuing valid and effective contract, provides in part that plaintiff:

> "* * * will not violate any of the provisions of the Constitution * * *. I further agree in the event of a claimed grievance against the Union to faithfully observe the procedure of and fully accept as final the findings of the Trial Boards within the Order; and I hereby expressly waive any right to institute proceedings in any court of law or equity against the Union; * * *."

Attached hereto, made a part hereof, and marked Exhibit "C" is a true and correct copy of said application and contract.

33. The institution of the instant suit by plaintiff is a flagrant violation and breach of the express covenant not to sue contained in said written agreement.

Wherefore plaintiff is estopped to assert the alleged cause of action set forth in the Amended Complaint, and this action should be dismissed.

FIFTH DEFENSE.

34. Article XVII, Section 3 of the Constitution of said International Union on August 11, 1952 and at all times since has provided that no lawsuit shall be brought in any court by any member of said Union until and unless all rights, remedies and provisions for hearing, trial and appeal within the organization shall have been properly followed and exhausted by the member complaining.

35. By letter dated August 11, 1952, from William E. Maloney, the defendant herein, acting as General President of the International Union of Operating Engineers, addressed

to the plaintiff and others, the plaintiff and others were directed to end a certain strike in the Philadelphia area. Said letter appears as Exhibit 2-D of plaintiff's Amended Complaint herein.

36. On the following day, to wit, August 12, 1952, plaintiff instituted a lawsuit against Maloney and the International Union of Operating Engineers and others by filing a Complaint in this Court, which was designated as Civil Action No. 14071, seeking to enjoin Maloney and the International Union from enforcing the Order contained in said letter of August 11, 1952, to terminate the aforesaid strike in the Philadelphia area.

37. Plaintiff obviously did not exhaust his remedies for appeal from the order complained of, as permitted and provided for in Article XVII, Section 1(a) of the Constitution, prior to filing the aforesaid lawsuit, inasmuch as the plaintiff filed his lawsuit the day after Maloney issued the Order complained of.

38. Article XVII, Section 3, of the Constitution further provides that any member violating the prohibition against filing lawsuits before internal remedies are exhausted shall be automatically fined the full amount of the costs incurred by the Union in the defense of such lawsuit, in addition to the penalties prescribed in the Constitution.

39. The plaintiff on August 12, 1952, the date when he filed said lawsuit, was familiar with the provision in the Constitution prohibiting the filing of said lawsuit and the penalties prescribed for violating said provision, inasmuch as he co-sponsored the amendment to the Constitution which became Section 3 of Article XVII.

40. The amount of the costs incurred by the International

Union in defending the lawsuit filed by the plaintiff was $3,500.

41. The General Executive Board of the International Union by decision dated September 24, 1952, Exhibit 3 of plaintiff's Amended Complaint herein, fined the plaintiff $3,500.

42. The General Executive Board in said decision imposed the further penalty of suspending the plaintiff from membership in the International Union for a period of six years from the date of said decision, provided that upon promptly discharging his financial obligations to the International Union he would be placed on probation for a period of six years, during which period of probation he should be barred from attending all meetings of the International Union and from holding office therein and participating in the internal activities of the organization.

43. During the period of probation the plaintiff by said decision of the General Executive Board was not barred from any other attributes of membership in the International Union, including the right as a member of the International Union of Operating Engineers, to perform work for an employer.

44. The decision of the General Executive Board of September 24, 1952, which imposed the penalty of prohibiting plaintiff from holding office in the International Union and otherwise participating in the internal activities of the International Union during the 6-year probationary period, was reached following (a) the filing of charges against the plaintiff within the organization, (b) the filing of an answer thereto by the plaintiff, in which he admitted starting the lawsuit without first resorting to his remedies within the organization, and (c) the holding of a hearing thereon, at which the plaintiff was present in person.

45. The General Executive Board of the International Union by virtue of Article V, Section 7 and Article XVI, Section 3, had the authority to impose the aforesaid penalties on the plaintiff for having violated the Constitution as aforesaid.

46. There is no genuine issue of material fact raised by the averments of the Amended Complaint, and the defendant is entitled to judgment as a matter of law.

SIXTH DEFENSE.

47. Your defendant further avers that the plaintiff subscribed to and became bound by the Constitution of the International Union of Operating Engineers, a copy of which is attached hereto, made a part hereof and marked Exhibit "D", which Constitution averred supreme supervisory powers on the General President over plaintiff Underwood by virtue of Article VI, Section 3 thereof, as follows:

> "He shall have power to direct and supervise all Local Unions, Local Officers and any other subdivision of the International Union and members."

48. Your defendant further avers that the said Underwood owed a primary duty to observe and obey the said supervisory power of the General President by virtue of Article XXIII, Subdivision 3, Section (a), as follows:

> "Members of Local Unions shall conform to and abide by the Constitution, Laws, Rules, Obligation and Ritual, and the decisions, rulings, orders and directions of any authority of the International Union empowered by this Constitution to make them."

And Underwood further took oath to:

"* * * adopt, conform to and abide by * * * the orders of its authorized officers,"

as provided in the Ritual of the organization.

49. Your defendant further avers that Underwood, in derogation of his duties and oath aforesaid and in deliberate rebellion against the Constitutional power of the General President and for the avowed personal objective of "putting the contractor associations out of business", flagrantly, deliberately and unnecessarily engaged in the following conduct:

1. He prolonged the said strike contrary to the best interests of the membership.

2. He rejected the means available to him for the peaceful negotiation and settlement of the strike issues.

3. He incurred the ill will of the Building Trades Council of Philadelphia and its 6500 members who were thrown out of work because of the said strike, as a result of which said Building Trades Council condemned the continuance of said strike by the plaintiff and adopted resolutions forbidding their members to work on any job on which a member of Local 542 was employed.

4. His conduct and continuance of the strike caused widespread dissension within the Local Union, creating demands among its members for separation and separate charters and for supervision by the International Union.

5. He improperly used funds of Local 542 to hire pickets from other unaffiliated unions.

6. His conduct in the continuance of the strike brought the Local Union and the International Union into disfavor

and public disrepute, which led to a personal appeal from the Governor of Pennsylvania to the defendant for a resumption of work on public projects.

7. He instigated the adoption by the Executive Board of Local 542, which was controlled and domineered by him, of a resolution designed to resist and circumvent all actions in the premises by the International, in the exercise of its powers and authority under the Constitution.

8. He caused to be filed the Civil Action in this Court hereinabove referred to, No. 14071, in which inter alia he made outrageously false, malicious and defamatory allegations charging misconduct on the part of the General Officers of the International, alleged improper and illegal conspiracy with third persons and alleged violation of the Clayton and Sherman Acts through an alleged conspiracy on the part of the General President of the International alleged to have been designed to defraud the members thereof; and subsequently when full publicity to his said false, malicious and defamatory statements had been attained in the law suit, he stipulated for the formal dismissal of record of the said action with prejudice.

Wherefore defendant further avers that by reason of the facts hereinabove in this Answer set forth, plaintiff is guilty of unclean hands, and on that account should be denied relief by a Court of Equity.

Wherefore, defendant asks that the Amended Complaint be dismissed at plaintiff's cost.

CHARLES A. WOLFE,
Attorney for Defendant,
1421 Chestnut St.,
Philadelphia, Penna.

Answer to Amended Complaint [in Civil Action No. 14398]—Exhibit "A"

WILLIAM H. THOMAS,
440 Leader Building,
Cleveland, Ohio,
MONTGOMERY, McCRACKEN,
WALKER & RHOADS,
1421 Chestnut Street,
Philadelphia, Pa.,
Of Counsel for Defendant.

EXHIBIT "A".

REPORT

To the General President of the
International Union of Operating Engineers,
1003 K Street, N. W.,
Washington, D. C.

In re: Local Union 542, International
Union of Operating Engineers
Philadelphia, Pa.

Dear Sir and Brother:

Pursuant to the order of General President William E. Maloney, copy of which is herewith attached and is self-explanatory, I desire to submit report as his Deputy and Hearing Officer regarding Local Union 542 and the appearance of certain members thereof, in response to a notice to show cause contained in the General President's order of Supervision dated August 19th, 1952.

The hearing was set for 1:00 p.m. at the General Office, 1003 K Street, N. W., Washington, D. C. on August 26th, 1952. Due to a delay in train service, the parties did not

Answer to Amended Complaint [in Civil Action No. 14398]—Exhibit "A".

arrive until 2:00 p.m. The following members were present representing Local Union 542:

Roy J. Underwood, President and Business Manager
Henry Lavery, Business Agent
Girard Leone, Business Agent
Homer Dawson, Business Agent
Vernon Brightbill, Business Agent
A. L. Smith, Business Agent
Peter Pantelez, Business Agent
Columbo Acchione, Member of the Executive Board and Trustee
James Russell, Master Mechanic of Freyn Company
Michael Concordia refused to state who he worked for.

The meeting got under way with the reading of the General President's letter to me, William E. Carter as Hearing Officer, following which the Delegation were asked to present its reasons in connection with the matter on hearing.

Brother Underwood acted as spokesman for the group and advised that all present were bewildered as to why the order of August 19th had been issued, and that there was no basis for the allegations contained in the order. That all allegations were denied and that all things which had been done by himself had been in accord with the Constitution and that at the time supervision was invoked, he was simply acting as the Agent of Local Union 542.

Brother Dawson suggested that the letter of supervision be read and that a discussion take place point by point.

Brother Underwood read the letter of supervision and stated that the primary reason for ordering supervision no longer exists and did not exist at the time the order was issued. He stated the strike no longer existed and he admitted that action had been taken by the Philadelphia Building Trades Council as referred to in the General President's order.

He stated that he took issue with the General President as

to the proceedings held in Chicago, and further stated that nothing had been agreed upon there by him. Upon the subject of loss of good will, Brother Underwood stated that this was an unknown substance and that it was impossible for him to put his finger on any instance of same. Therefore, he did not know about it.

He admitted that Governor Fine had asked for intervention by the International Union. He denied that any dissention existed on a rampant basis. He further denied that any members were seeking to withdraw or set up a separate charter or that supervision had been asked for and insisted that supervision was illegally imposed and that the orders of the General President were illegal and that in all instances he was bound to follow the membership, when the membership took issue with the top authority in the International Union.

On the subject of picketing during the recent strike Brother Underwood admitted that pickets had been secured from members in the Maritime Trades Council, but refused to tell how many pickets had been secured. He admitted that he had signed two checks for an undetermined amount, payable to the President of the Maritime Trades Council for picketing expenses.

On being asked whether the checks were for more or less than one thousand dollars, he refused to answer. He also said that the Maritime pickets took divided authority from himself and from the Maritime Council officers. He reiterated that the General President's order of August 11th and of August 19th were both illegal and related about calling a meeting of his Executive Board on the morning of August 12th to resist the authority of the International Union and the General President.

He related that Mr. Friedman, Attorney for Local Union 542 was present and read the bill of complaint, but upon questioning, none of the other members present at the hearing could recall having heard the bill read.

Answer to Amended Complaint [in Civil Action No. 14398]—Exhibit "A"

Brother Underwood said he felt a lawsuit was necessary to resist the General President and that he gave the facts to Mr. Friedman, upon which the suit was based and that after the suit was drawn up, he, Brother Underwood, read it thoroughly and signed it. He said the allegations regarding conspiracy and violation of the Sherman Acts and the Clayton Acts and the linking of the contractors and J. Howard McGrath to the lawsuit was the attorney's idea based upon the facts which Underwood had given to the attorneys.

When asked whether the charges of the lawsuit were in his opinion, commendable or creditable to the International or to the International Officers he wanted to know what "creditable" meant, but finally stated that the lawsuit as filed was something creditable in that it was necessary to prevent the International and the General President from imposing his will upon the Local Union.

At this point, Brother Underwood declined to answer any questions unless a record was made of such questions and answers thereto and although provisions were made to provide ample tablets and pencils, he stated he did not want any and did not want to make notes.

He was then asked the question as to whether an assessment had been placed upon the members of Local Union 542 with the approval of the General President, or the International Union. Brother Underwood refused to answer the question.

He was then asked whether an assessment had been collected from permit men working within his district. He again refused to answer.

He was asked whether he had information regarding resistance to following advice and instructions issued out of the General President's office by Brother Hill or Brother Wharton. He again refused to answer the question.

He also advised the other members present that they did not have to answer any questions they did not desire to.

At this point, Brother Brightbill said that to his knowl-

edge no orders had been issued to disregard Brother Hill or Brother Wharton's authority.

Brother Smith testified to the same effect.

Brother Pantalea said yes there was some talk between him and the employer on the Morrisville job regarding the General President's authority issued through Hill or Wharton, but that he, Pantalea, had said no orders would be honored except such as came through his Business Manager.

The question was then asked whether the members of the Committee present knew what was in the bill of particulars of the lawsuit and if they had heard it read. Brother Girard Leone said he did not recall as having heard it read. Brother James Russell refused to answer the questions and no answer came from the remaining members present.

Brother Girard Leone at this point said he would recommend that the order of supervision be lifted and he thought he spoke the mind of nearly everyone present on the grounds that Attorney Friedman has misled the members of Local Union 542 and that the lawsuit was a mistake and that supervision should not be imposed because a lawsuit had been filed through an attorney's act.

He further stated that what he saw of the attorneys in the Judge's Chambers at Philadelphia convinced him that the way they acted they were a disgrace to the profession.

At this point Brother Underwood joined in the conversation by accusing the International and the contractors of linking up together to beat down the men as shown by the conference in the Judge's Chambers in Philadelphia and stated that the International aligned itself with the contractors' attorneys in the Judge's Chambers to defraud the legitimate objectives of the Local Union.

This about concluded the testimony of the members present at the hearing and it was asked a number of times if any of those present desired to offer any other testimony of any nature in reference to the case in question and no answer was given by any of the Committee to this question. Therefore, the meeting was adjourned at 3:30 p.m.

Answer to Amended Complaint [in Civil Action No. 14398]—Exhibit "A"

As the presiding officer at the hearing I have come to the following conclusion regarding this case:

It is apparent from listening to Brother Underwood and observing the silence which took place most of the time on the part of the other members of his Committee that he (Brother Underwood) is dominating the picture and insisting that it was right for him to file any kind of a lawsuit against the International Union regardless of how bad the charges were contained therein and that he presents a picture of one who would do the same thing over again without any remorse. No excuse or apology was offered for resisting the International Union in trying to get this strike settled on August 11th. Only complete resistance to authority is observable in all of Underwood's statements and his general attitude during the hearing of refusing to answer questions.

There was nothing presented on the part of Local Union 542 which in any way justified a lifting of supervision of the Local Union at this time.

An important matter which I desire to bring to the attention of the General Executive Board has to do with the filing of a very serious lawsuit by Brother Roy J. Underwood and his attorney against the International, its General President and General Officers.

Charges in lawsuit alleged misconduct on the part of the General Officers, alleged improper and illegal conspiracy with third persons, alleged improper relations between J. Howard McGrath and the General President, alleged violation of the Clayton and Sherman Acts through a conspiracy by the General President to defraud the members.

The lawsuit presents an outstanding example of a document which defames our General Officers. Here was a triple violation of the Constitution of our International Union by Brother Underwood, who as President and Business Manager of Local Union 542 was supposed to know the rules of the organization, and these violations were:

Answer to Amended Complaint [in Civil Action No. 14398]—Exhibit "A"

1. The deliberate defying of the Constitutional authority of the General President.

2. Circumventing the Constitution by filing a lawsuit when no complaint or charge had been filed within the International Union.

3. Using the lawsuit as a means to charge the General President and his fellow officers with the most reprehensible, derogatory and illegal conduct and then when full publicity had been attained in the lawsuit, to dismiss it with prejudice showing the utter baselessness of the allegations.

I charge that Brother Roy Underwood, in assisting in the preparation of this lawsuit, in verifying and filing it in the court and thereby causing it to become public property with notices in the newspapers, has published literature of a defamatory nature against our General Officers contrary to the provisions of Article XVI, Section 1, of the Constitution of the International Union of Operating Engineers and that this is a matter which concerns every single member of our organization and is so serious as to deserve the attention of the General Executive Board of the International Union.

It is apparent that Brother Underwood was unwilling to make full disclosure at the hearing. I feel that on the question of irregular procedures by Local Union 542, full and free information should have been willingly given by Brother Underwood and his Committee, but the same was withheld. The refusal to explain fully about hiring outside pickets with the funds of Local Union 542; refusal to tell upon what basis the pickets were working or were paid; the refusal to give the amounts paid for pickets, since it involved only two checks written by Brother Underwood; the refusal to advise about the assessment placed against the members or about whether the By-laws had been regularly amended providing such assessments with the General President's

approval; the refusal to tell about collecting assessments from permit men, etc.

These are but a few of the facts which were hidden behind the silence of Brother Underwood and which, coupled with his attitude on the question of defiance against the General President's order of August 11th as well as his policy of declaring strikes in 1950 and 1952 without the approval of the General President. That the attitude of Underwood and his officers in the preparing and filing this type of lawsuit before Judge Grim, involving as it did the reprehensible charges against the General Officers, all fairly well typify the independence which Brother Underwood and his officers have assumed for themselves and Local Union 542 of the International Union of Operating Engineers. It is apparent to me, Brother Underwood considers the International Union to be incidental and subservient to Local Union 542 and that under no circumstances will he follow the advice, ruling or request of the General President or the General Executive Board when it runs counter to his intentions.

It is apparent that he believes that affiliation with the Building and Construction Trades Council of Philadelphia or the Building and Construction Trades Department of the American Federation of Labor or the American Federation of Labor itself, are merely secondary bodies to be brushed off or resigned from as he decides at the moment.

He shows callous indifference to constitutional responsibilities, which is further borne out by his present attitude in that after filing his derogatory lawsuit against the General President and the General Officers and then later, after a court hearing thereon, he dismissed the lawsuit with prejudice, he still made no move to apologize or ask pardon of those whom he had so freely defamed and insulted. This was brought to his attention during the hearing before me, but he absolutely refused to say anything on the subject or to express any sorrow for his act.

Answer to Amended Complaint [in Civil Action No. 14398]—Exhibit "A"

As the presiding hearing officer of these proceedings in observing his manner and what he said and what he refused to say, it appears to me that he is one who has made up his mind not to go along with the International Union but intends operating a Local Union independent of any influence of the International Union or its General Officers or of the American Federation of Labor. I have come to this conclusion not from any one particular thing he may have said, but from his general attitude during the hearing.

Respectfully submitted,

WILLIAM E. CARTER
William E. Carter,
Hearing Officer.

Answer to Amended Complaint [in Civil Action No. 14398]—Exhibit "B"

EXHIBIT "B"

September 26, 1952

Registered Mail
Return Receipt Requested

Mr. Roy Underwood
2801 Garrett Road
Drexel Hill, Pa.

Dear Sir and Brother:

I sent you under date of September 24 copy of the decision of the General Executive Board in the matter of the charges considered against you.

The purpose of this letter is to advise you that should you desire a rehearing of this matter, your request accompanied by the reasons therefor should be filed within ten days from the date of this letter in order that the matter may properly come before the General Executive Board in the regular order of business before the Board.

Fraternally yours,

CHAS. B. GRAMLING
GENERAL SECRETARY-TREASURER

CBG:MEB

10/13/37 Pd 69 Initiated 10/18/37 Register # 253963

APPLICATION FOR MEMBERSHIP

International Union of Operating Engineers

Affiliated with The American Federation of Labor

Local Union No. 542

CITY _____ STATE _____

10/12/37 193__

GENTLEMEN: Having formed a favorable opinion of your Union, I hereby make application to become a member thereof and if accepted I agree as follows: That I will remain a member until expelled; that I will not violate any of the provisions of the Constitution, Rituals, By-Laws, Customs, Rules, or Mandates of the order; that I will not enter into or sign any individual contract of employment with any person, firm or corporation, or any contract or agreement which provides for the withdrawal of my membership from this Union; I further agree in the event of a claimed grievance against the Union to faithfully observe the procedure of, and fully accept as final the findings of the Trial Boards within the order, and I hereby expressly waive any right to institute proceedings in any court of law or equity against the Union; I further agree to conform to and abide by all laws, rules, regulations and orders stipulated in the Constitution and By-Laws, or given by those in authority.

NAME Roy J Underwood DATE OF BIRTH April 29th YEAR 1905

RESIDENCE 1916 Wallace St. CITY Phila. STATE Pa.

EMPLOYED BY B. M. Weiss

I also agree to pay an entrance fee of $ 69 which shall include 3 month dues in advance. I further agree that this entrance fee shall be fully paid by _____ 193__

Recording Secretary _____ Signature Roy J Underwood

EXHIBIT "C" (34 a)

EXHIBIT "D".

CONSTITUTION

International Union of Operating Engineers

International Union of Operating Engineers
General Office: 1003 K Street, N. W.
Washington 1, D. C.

The
CONSTITUTION
Governing
THE INTERNATIONAL UNION OF OPERATING ENGINEERS
And
All Subdivisions, Bodies, Local Unions and Members Thereof

The International Union of Operating Engineers
Organized December 7, 1896
Affiliated with A. F. of L.

Compiled by The Constitution Convention Sept. 30, 1938, and adopted by Referendum Vote of Entire Membership Dec. 31, 1938.

Amended by 21st Int. Convention April, 1940
Amended by 22nd Int. Convention April, 1944
Amended by Referendum Sept. 1, 1947
Amended by 23rd Int. Convention April, 1948
Amended by Referendum August 1, 1951
Amended by 24th Int. Convention April, 1952

THE CONSTITUTION OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS

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PREFACE

ORDER OF BUSINESS FOR LOCAL UNIONS

1. Meeting called to order per ritual.
2. Examination of dues books by Conductor.
3. Roll call of officers.
4. (a) Minutes of the previous meeting.
   (b) Minutes of the Local Executive Board.
5. Presentation of applications for membership.
6. Reports of committee on applications.
7. Election of candidates for membership.
8. Initiation of candidates for membership.
9. Reading of communications by the Recording-Corresponding Secretary.
10. Reading by the President receipts for the per capita tax and other monies sent to the General Secretary-Treasurer.
11. Election and installation of officers.
12. Reports of sickness, accident and death of members.
13. (a) Reports pertaining to apprentices.
    (b) Reports pertaining to Branch Locals.
14. Unfinished business.
15. New business.
16. Reports of (a) Officers
    (b) Delegates
    (c) Committees.
    (d) Business Representatives
    (e) Trustees
    (f) Auditors
    (g) Treasurer.
17. Subjects for the good and welfare.
18. Appropriations for monies from the treasury (drawing orders signed by the President and the Recording-Corresponding Secretary authorizing the payment of bills and other expenses).
19. Motion or order for adjournment.

THE CONSTITUTION
OF
THE INTERNATIONAL UNION
OF
OPERATING ENGINEERS

ARTICLE I

NAME, PURPOSES, GOVERNMENT AND RITUAL

Name

Art. I. Section 1. This organization shall be known as the International Union of Operating Engineers and it shall be the policy of this organization to be affiliated with the American Federation of Labor and such of its departments as this organization may deem expedient.

Purposes

Art. I. Section 2. The objects and purposes of this organization are to elevate the trade of operating engineers (by which trade the membership thereof earn a livelihood for themselves and their dependents) to its proper position in all industrial activity and the ranks of organized workers; to encourage a higher standard of skill among its members; to cultivate feelings of friendship among the men of the craft and those who may employ its members; to assist its members in securing and stabilizing employment; to

assist employers in obtaining skilled craftsmen from among its membership; to encourage and assist affiliated Local Unions to negotiate and consummate contractual relations with employers, through which wages, hours and conditions of employment may be properly regulated to the benefit of both the membership and the employers; to encourage and legislate for, or by economic means secure, such reduction of the number of daily and weekly hours of labor as will guarantee the proper distribution of available work to the greatest number of the craft; to bring about increased opportunity for recreation and rest, the proper freedom to observe the days set aside for religious worship and those recognized as the days to commemorate certain national, state and city events and Labor Day; to elevate the moral, intellectual and social conditions of all members by legal and proper means, and to encourage, aid and assist all Local Unions in the enactment of state and city Engineers' License Laws for the better protection of life and property, through its various subdivisions and officers.

The International Union of Operating Engineers shall be dedicated to law and order and pledged to support and maintain the established system of Government in the United States and Canada under which this organization has grown and prospered; to countenance no change in such system of Government save through the orderly processes provided by law; to vigorously oppose the efforts of those who engage in, advocate, support or approve the overthrow of the established order (whether of the Government or of this organization) by force of arms, subversive tactics, bloodshed and violence or the other revolutionary means by which communists and their ilk seek to gain their ends.

Government

Art. I. Section 3. The International Union of Operating Engineers shall be governed by the following bodies:

1. General Convention
2. General Executive Board
3. Officers
4. Board of Trustees
5. State and Provincial Organizations
6. Joint Executive Boards
7. Parent Local Unions.

And each of such bodies shall constitute a distinct entity each with its own separate identity but functioning in conformity to the Constitution and Ritual. No Local Union or its officers, employees or members, shall have power or authority to act, nor be deemed to act, on behalf of or agent for, or legally bind any other Local Union or member thereof, the General Convention, the General Executive Board, any of the General Officers, or the International Union of Operating Engineers, unless such authority is expressly granted by the provisions of this Constitution or by other written document. No Local Union, officer or member thereof, Supervisor or Representative, shall be authorized or permitted to accept service of summons, subpoena, or make entry of appearance, for or on behalf of any General Officer, General Executive Board, Board of Trustees, or any other Local Union or other subdivision of the International Union of Operating Engineers.

Ritual

Art. I. Section 4. The Ritual and Obligation shall form a part of this Constitution and shall be administered in such form, and from time to time revised in such manner, as the General President, with the approval of the General Executive Board, may direct.

ARTICLE II

EMBLEM

Description

Art. II. Section 1. The official emblem of the International Union of Operating Engineers, duly registered as a trade-mark, is as follows:

Use of Emblem

Art. II. Section 2. This emblem shall be generally used on all printed matter, including charters, supplies and stationery of the organization and its various subdivisions, and in forms to be worn by members.

Seals and Facsimiles

Art. II. Section 3. The official seal of the organization shall bear this emblem. The seal of each General Officer and subdivision of the or-

ganization shall likewise bear this emblem together with the title of such officer or the name of such subdivision using the same. No seal shall be held or used by any General Officer or subdivision of the organization, nor shall the use or holding of any seal confer authority unless such seal shall have been furnished by the General Secretary-Treasurer. All seals shall be the property of the International Union of Operating Engineers. No facsimile of the emblem shall be used except such as are supplied by the General Secretary-Treasurer.

ARTICLE III

GENERAL CONVENTIONS

Powers

Art. III. Section 1. All the sovereign power, including the legislative, executive, administrative and judicial, of the International Union of Operating Engineers shall be vested in its General Convention when in session. Specifically, but not in limitation of the power thus vested, the General Convention may grant and issue charters for Local Unions and subdivisions thereof and local, State and Provincial organizations and such other subdivisions of the International Union as from time to time may be deemed advisable; set the cost for said charters and necessary supplies issued with said charters; suspend and revoke any of said charters; adopt and issue a seal for the International Union, its General Officers, its Local Unions, local, State and Provincial organizations and any other subdivisions; adopt, print

and issue dues books for the use of the membership; print and issue per capita tax dues stamps and collect for same; print, issue and mail an official journal; print and issue such books, stationery, supplies and paraphernalia and sell the same to affiliated Local Unions, local, State and Provincial organizations and any other subdivisions for the proper keeping of their records and affairs; invest the funds of the International Union; buy and sell real estate (improved or otherwise) and bonds and other securities; establish, impose and collect per capita tax; establish, impose and collect assessments upon members, charter applicants, Local Unions, local, State and Provincial organizations and any other subdivisions as hereinafter provided; impose an initiation fee and an initiation fee tax; establish a Defense Fund and pay strike benefits; establish, revise, amend and from time to time change the Death Benefit Fund and pay regulated benefits therefrom; supervise the operation of Local Unions, local, State and Provincial organizations and any other subdivisions and appoint supervisors and receivers when necessary; prefer charges against Local Unions, local, State and Provincial organizations and any other subdivisions and officers (individually or collectively) or their members (individually or collectively) and order trials with authority to discipline those affected; prefer charges and order trials with authority to discipline any General Officer or any member of the Board of Trustees; register, copyright and trademark the name of its official journal, its emblem and any document of the organization; establish and maintain a general headquarters in Washington, D. C.; employ clerical and other help; employ organizers and deputies; confiscate and sue for the possession of all real and personal

property, paraphernalia, books, charters, records, card indexes, seals and funds of a Local Union, local, State or Provincial organizations and any other subdivisions; establish a General Executive Board with full powers of the Convention between Conventions; include and adopt as part of the Constitution a procedure for the government and regulation of Local Unions, subdivisions thereof, local, State and Provincial organizations and any other subdivisions; establish, define, segregate, assign and amend craft jurisdiction and territorial jurisdiction to which Local Unions, their subdivisions, local, State and Provincial organizations and any other subdivisions already established or hereinafter chartered shall confine their activities; establish, enter into, amend or abrogate understandings or written agreements with other craft unions affiliated with the American Federation of Labor; amalgamate competitive craft unions with the International Union of Operating Engineers and by such amalgamation compel all individual officers and members of the amalgamated union to be subservient to the Constitution, amendments thereto and decisions and orders of the General Executive Board and the General President of the International Union; review and decide appeals from decisions properly filed with it; provide for the general welfare of the organization and its members; take all steps necessary to protect the interests of the organization; together with all other rights, powers, privileges and immunities not herein specifically denied.

Method of Holding Conventions

Art. III. Section 2. A General Convention of the International Union of Operating Engineers shall be held on the second Monday of April.

1940, and thereafter Conventions shall be held quadrennially at such place as the preceding Convention may determine (unless referred to the General Executive Board by the Convention for selection), provided, however, if not later than the 15th. of November of the year prior to the holding of a Convention there shall be filed with the General Secretary-Treasurer fourteen (14) separate petitions signed by Local Unions, each in a different state of the United States, together with at least one Local Union in the Dominion of Canada, requesting that a referendum be taken of the entire membership limited to the following question: "Shall the next General Convention be postponed until the second Monday of April (year to be inserted)?" Thereafter a referendum shall be taken thereon. The question presented by such referendum shall then be open for discussion in the columns of the Journal and a vote on the question shall be taken in the manner hereinafter prescribed and said vote shall be entered upon a tally sheet to be prepared and sent to the Local Unions by the General Secretary-Treasurer and returned by said Local Unions to the General Secretary-Treasurer on or before the 15th day of February next succeeding. The result of this vote shall be published in the March issue of the Journal following the taking of said vote.

No Convention sought to be postponed in the manner above described shall be postponed until and unless a vote be cast thereon, in the manner hereinafter prescribed, by not less than seventy-five (75) per cent of the entire membership in good standing and entitled to vote and unless sixty (60) per cent thereof cast their votes in favor of said postponement. The votes upon such referendums shall be held by the Local Unions during the last meeting in January next preced-

ing the scheduled Convention and the question of whether those voting are actually in good standing and entitled to vote shall be determined by the tellers appointed by the General Executive Board together with a Certified Public Accountant employed by said Board, on the basis as shown by the said January report submitted to the General Secretary-Treasurer with the payment of the per capita tax of members for the said month of January. The report of the vote in each Local Union shall be forwarded to the General Secretary-Treasurer at the time the said January report covering the per capita tax is submitted to the International Union and enclosed in a separate envelope directed to the Tellers.

Composition of Convention

Art. III. Section 3. The General Convention shall be composed of legally elected General Officers, members of the General Executive Board and the Board of Trustees and the duly elected representative delegates from Local Unions, and none but these shall be entitled to vote. The election of delegates and alternates shall be held at an election in the said Local Unions in February prior to the Convention.

Officers of the General Convention

Art. III. Section 4. The duly elected General Officers of the International Union of Operating Engineers shall be the officers of the General Convention.

Basis of Representation

Art. III. Section 5. The basis of representation shall be one delegate for each one hundred members or less, and either one delegate or one vote for each succeeding one hundred members

or majority fraction thereof. No delegate shall be permitted to represent more than one Local Union; nor shall he be allowed to vote for more than three hundred members.

Voting in General Convention

Art. III. Section 6. The number of votes each Local Union shall have in the Convention shall be based on the average number of members on which the Local Union has paid per capita tax for the calendar year prior to the date of the Convention.

Credentials of Delegates

Art. III. Section 7. Delegates to the Convention must present credentials on blanks furnished by the General Secretary-Treasurer, properly attested under the seal of the Local Union of which they are members in good standing and entitled to vote. To be entitled to have its delegate or delegates seated and have a vote in a General Convention, both the delegates and their alternates, as well as the Local Union represented by them, must not be in arrears in the payment of the per capita tax or any other indebtedness to the International Union due on or prior to the 15th day of March next preceding the Convention. The right of delegates to be seated in a General Convention shall be upon report and approval of the Credentials Committee. An appeal from a decision of the Credentials Committee may be had to the Convention, and delegates affected thereby shall not be seated until said appeal shall have been voted thereon by the Convention.

Expenses of Delegates

Art. III. Section 8. The mileage and expenses for the attendance of the delegates to the Convention shall be defrayed by the Local Union they represent.

Quorum

Art. III. Section 9. A quorum for the transaction of business shall consist of a majority of the delegates seated at the Convention.

Appointment of Committees

Art. III. Section 10. Upon the opening of the Convention the General President shall appoint his committees, except that the Committee on Law, Officers' Reports and Credentials shall be appointed by him prior to the Convention, and report at the call of the General President. The General Secretary-Treasurer shall furnish the General President a list of delegates whose Local Unions are in good standing as required by the Constitution. After the report of the Committee on Credentials has been acted upon the General President shall appoint such other committees as may be necessary. Unless otherwise ordered each committee shall consist of five (5) members.

Attendance of General Officers

Art. III. Section 11. The General Officers, Members of the General Executive Board and the Board of Trustees shall be required to attend all Conventions and their expenses shall be paid out of the funds of the International Union of Operating Engineers, and by virtue of his office each shall be one of the delegates representing the Local Union in which he holds membership.

ARTICLE IV

GENERAL OFFICERS

Titles and Terms of Office

Art. IV. Section 1. The officers of the International Union of Operating Engineers shall consist of a General President, First General Vice President, Second General Vice President, Third General Vice President, Fourth General Vice President, Fifth General Vice President, Sixth General Vice President, Seventh General Vice President, General Secretary-Treasurer and three Trustees. Each officer shall hold office for a term of four years or until his successor shall be elected and qualified, and each shall be nominated, elected, installed and take office only in the manner and only at the time hereinafter specified.

Nominations

Art. IV. Section 2. Candidates for the positions of General Officers shall be nominated on the last day of the Convention, and any member of the organization who is entitled to hold office in his Local Union shall be eligible for office. Nominations must be made by delegates from Local Unions seated at the Convention.

Election of General Officers

Art. IV. Section 3. The election of General Officers shall take place not less than sixty days after adjournment of the Convention and shall be held by referendum submitted to the entire membership in good standing and entitled to vote in Local Unions. Said referendum shall be conducted by the General Secretary-Treasurer and shall be upon tally sheets and ballots transmitted

by the General Secretary-Treasurer to the Local Unions. A vote shall be taken by the Local Unions at a regular meeting held during the month of July next following the General Convention. Ballots shall be transmitted by the Local Unions to all members in good standing and entitled to vote as appears from the monthly reports to the General Office for the said month of July.

Art. IV. Section 4. The General Executive Board shall, immediately following the holding of the General Convention, appoint three tellers and employ a Certified Public Accountant, all of whom shall receive, check, certify and announce the results of the tally sheets, ballots and voting conducted by the Local Unions and transmitted to them. No General Officer shall be elected except by a plurality of the votes cast.

Art. IV. Section 5. After the vote shall have been taken by the Local Unions in the manner herein described the report of said vote upon the tally sheets provided shall be transmitted by the Local Unions to the tellers and said Certified Public Accountant. Said tellers and Certified Public Accountant shall report the result of said vote to the General Secretary-Treasurer who shall cause it to be published in the next issue of the Journal.

Art. IV. Section 6. The newly elected General Officers shall be installed, take office and begin their terms as of the first day of September next following the holding of the General Convention at which they were nominated.

Art. IV. Section 7. The newly elected officers shall appear before a Notary Public prior to taking office and make oath that they will perform the duties of the offices to which they have been elected, to the best of their ability, and in

accordance with the Constitution of the International Union, and a certificate signed by the Notary Public before whom such oath of office is taken shall be filed by the newly elected officers with the General Secretary-Treasurer.

ARTICLE V

POWERS AND DUTIES OF THE GENERAL EXECUTIVE BOARD

Members

Art. V. Section 1. The General Executive Board shall consist of the General President, First General Vice President, Second General Vice President, Third General Vice President, Fourth General Vice President, Fifth General Vice President, Sixth General Vice President, Seventh General Vice President and the General Secretary-Treasurer, and each member of this Board shall be provided with an official seal.

Powers

Art. V. Section 2. All the powers of the General Convention when in session shall, when the same is not in session, pass to and vest in the General Executive Board, with the exception of such powers as may herein be specifically delegated to the various officers and subdivisions of the International Union. Specifically, but not in limitation of its power, it may initiate amendments to the Constitution and conduct referendums thereon, and it may formulate and establish pensions for such of the General Officers of the International Union of Operating Engineers and the employes of the said International Union as

the General Executive Board shall deem worthy, and it may order that payments be made thereon for the terms allotted, in such manner as to vest irrevocably the benefits thereof; provided, however, that any and all pension applications so adopted shall be reasonable and non-discriminatory.

Vacancy in Office

Art. V. Section 3. In case of death, resignation or removal of the General President, the General Secretary-Treasurer shall call a meeting of the General Executive Board within fifteen (15) days, and said Board shall elect from among its members a General President, who shall take office immediately following his election by the Board. The General Executive Board shall and is hereby ordered to fill any vacancy occurring in the General Executive Board or the Board of Trustees. All charges against General Officers shall be heard and decided by the General Executive Board.

Meetings

Art. V. Section 4. The General Executive Board shall hold sessions at such places and at such times as it may decide. It shall meet at the call of the General President, or at the request of three members of the General Executive Board.

Quorum

Art. V. Section 5. A quorum for the transaction of any business by the General Executive Board shall consist of a majority of the members thereof.

Transacting Business

Art. V. Section 6. The General Executive Board may transact any business before it without holding a session and record the votes of the members by mail, telegram or telephone.

Hearings

Art. V. Section 7. The General Executive Board may hold hearings and conduct trials and decide appeals in connection with any matter, complaint, business or case coming before it and the decisions of the General Executive Board thereon, and its findings of facts, shall be final, conclusive and binding. It shall have full power to determine the method of procedure and the times and places for the holding of hearings, trials and appeals. It shall also be empowered to interpret the provisions of this Constitution and decide questions of law arising thereunder.

ARTICLE VI

POWERS AND DUTIES OF THE GENERAL PRESIDENT

As Presiding Officer of Convention

Art. VI. Section 1. It shall be the duty of the General President to preside at all meetings of the General Convention. At least thirty days prior to the holding of a General Convention he shall publish all decisions rendered by him during his term of office and shall mail copies of same to each Local Union in sufficient numbers to allow a copy for each delegate to the Convention.

To Review Cases and Interpret Laws, Etc.

Art. VI. Section 2. He shall review all cases, complaints and charges filed with the General Executive Board or the General Secretary-Treasurer. He shall be empowered to render decisions on the merits of such cases, complaints and charges and his findings on the facts shall be final and conclusive. He shall also be empowered to interpret the provisions of the Constitution and decide questions of law arising thereunder. He shall be vested with all the administrative powers of the organization.

To Invoke and Administer International Supervision and Other Peremptory Powers

Art. VI. Section 3. He shall have power to direct and supervise all Local Unions, Local Officers and any other subdivision of the International Union and members. Whenever in his opinion the best interests of the organization require it, or Local Unions, Local Officers and any other subdivision of the International Union or members shall be deemed by him to be incompetent, negligent, or to have failed in carrying out their respective duties, or to have violated the Ritual, Obligation, laws, rules or decisions of the organization or its duly constituted authorities, he shall have full power to suspend or remove such individual members, suspend or remove such Local officers, suspend or revoke charters of such Local Unions or place such Local Unions and their officers and members under International supervision. He shall have power to designate and appoint persons to fill the places of those Local Officers of Local Unions suspended, removed or placed under International supervision, which appointees shall conduct the affairs over which they have been appointed for such

time and in such manner as he may direct. All of the business, finances, affairs and government of any Local Union whose charter shall have been suspended by the General President or shall have been placed under International supervision by him, shall be fully and completely conducted and administered by the General President or his deputy thereunto appointed with full power of control therein and thereover. During such suspension or International supervision all rights and powers of the Local Union to conduct its own affairs shall be suspended. He shall countersign all vouchers and checks for payment of monies or for withdrawing funds from the bank. He shall have power to appoint Local Officers pro tem and all committees not otherwise provided for, to deputize any member in good standing to perform any of the powers and duties of his office.

To Issue Charters, Etc.

Art. VI. Section 4. He shall be vested with full discretionary power to issue charters. He shall have power to appoint Representatives of the International Union in such localities as shall appear to him to be for the best interests of the organization.

As Chairman of General Executive Board, Etc.

Art. VI. Section 5. He shall preside as chairman of the General Executive Board and shall make a full report of the work in his office at each Board meeting. He shall devote his full time to the duties of his office. He shall have power to call upon any and all subdivisions, officers and members for assistance and advice when occasion demands or requires it. He shall be strictly accountable and responsible for the faith-

ful performance of his duties and shall administer and enforce every law, rule, regulation and requirement of the Constitution, Ritual and Obligation. He shall be vested with unlimited discretion in the application and administration of his powers and duties. He shall be vested with such other powers and duties as the General Executive Board may from time to time specifically delegate to him.

Hearings for Members

Art. VI. Section 6. Any and all members, Local Officers and Local Unions affected or aggrieved by any act or decision of the General President, may demand a hearing thereon before the General Executive Board, with appeal to the General Convention in the manner hereinafter prescribed.

Compensation

Art. VI. Section 7. The General President shall receive as salary such amount per annum as the General Executive Board may from time to time determine; provided, however, that such salary shall not be less than Fifteen Thousand Dollars per annum. He shall by virtue of his office be one of the delegates representing this organization at the conventions of the American Federation of Labor or sessions of any of its departments.

To Make Visitations

Art. VI. Section 8. Should any Local Union be involved in trouble or submit grievances to the General President or the General Executive Board, the General President shall visit such Local Union in person or send a deputy.

Vested With All Powers of General Executive Board in Interim, Etc.

Art. VI. Section 9. All powers heretofore vested in the General Executive Board when in session shall, when the same is not in session, pass to and vest in the General President. All of the acts and decisions of the General President shall be reviewable by the General Executive Board and shall continue in full force and effect until revoked by action of the General Executive Board.

ARTICLE VII

POWERS AND DUTIES OF VICE PRESIDENTS

Art. VII. Section 1. The General Vice Presidents of the International Union of Operating Engineers shall be members of the General Executive Board. They shall assist the President in the discharge of his official duties in such manner as he may direct and shall have such other powers and duties as from time to time may be specifically delegated to them by the General Executive Board.

ARTICLE VIII

POWERS AND DUTIES OF THE GENERAL SECRETARY-TREASURER

To Keep Record and Minutes

Art. VIII. Section 1. The General Secretary-Treasurer shall keep a correct record of the minutes and proceedings of the General Convention and of the General Executive Board. On the first day of January preceding a General Convention

he shall notify all Local Unions of the holding thereof, which notice shall set forth the provision of the Constitution relating to the basis of representation of delegates to the General Convention.

To Collect and Pay Monies

Art. VIII. Section 2. He shall collect and receive all monies and funds due from all Local Unions, subdivisions, officers, members or other persons to the General Office and deposit the same in such bank or banks as may be designated by the General Executive Board. He shall have custody of the Official Seal. He shall issue all drafts and checks in payment of general expenses, salaries and other bills in the manner and form provided by the General Executive Board and shall take receipts therefor. He shall maintain a General Office Membership and perform the duties incident thereto.

Furnish Bond and Make Investments

Art. VIII. Section 3. He shall give bond for the faithful performance of his duties in an amount not less than Twenty-five Thousand ($25,000.00) Dollars and with such bonding company as the General Executive Board may designate and the Board of Trustees may approve. He shall, when authorized by the General Executive Board, invest the funds of the International Union in the manner and form directed.

Membership Records and Monthly Reports

Art. VIII. Section 4. He shall keep a correct record of the membership of each Local Union and subdivision and issue quarterly to each Local Union a report as to his receipts and disburse-

ments. He shall make a monthly report to the General President and the General Executive Board and the Board of Trustees. He shall transmit to the financial secretaries of Local Unions per capita tax dues stamps as provided for in this constitution and shall keep a record thereof.

Compensation

Art. VIII. Section 5. The General Secretary-Treasurer shall be paid such salary as from time to time may be determined by the General Executive Board provided that the same shall be not less than Ten Thousand Dollars per annum.

Editor of the Journal

Art. VIII. Section 6. He shall edit and distribute the Official Journal subject to recommendations of the General Executive Board and the General President and shall promptly publish therein a record of the proceedings and measures adopted by a General Convention and allow reasonable space for the inclusion of articles submitted by Local Unions upon any measure submitted to vote of the membership.

Reports to General Convention

Art. VIII. Section 7. He shall, each month, pay all per capita taxes due from this organization to the American Federation of Labor or other bodies with which this organization may be affiliated. He shall make a full report of all matters relating to his office, his official acts and work, the amount of monies received and disbursed by him, the balance on hand and where deposited, to each General Convention.

Accounting for Stewardship

Art. VIII. Section 8. He shall at the end of his term of office deliver to the Board of Trustees all books, monies, property and other belongings of the International Union in his keeping. His books, records, transactions and affairs shall always be open for inspection by the General Officers.

Delegate to A. F. of L., Etc.

Art. VIII. Section 9. He shall, by virtue of his office, be one of the delegates to represent the International Union at the convention of the American Federation of Labor or its departments. He shall devote his full time to the duties of his office and shall have such other and further duties as may from time to time be delegated or assigned to him by the General Executive Board.

ARTICLE IX

BOARD OF TRUSTEES

Composition of Board

Art. IX. Section 1. There shall be a Board of Trustees consisting of three members elected in the manner hereinbefore stated. One of the members of the Board shall be elected by the Board to serve as Chairman thereof during the term of his office as a trustee.

Meetings of the Board

Art. IX. Section 2. Meetings of the Board of Trustees shall be held from time to time, as the members thereof may designate or upon call of the General Executive Board.

Quorum

Art. IX. Section 3. A quorum for the transaction of business by the Board of Trustees shall consist of a majority of the members thereof.

Powers and Duties of the Board of Trustees

Art. IX. Section 4. The Board of Trustees shall be the auditors of both the General Executive Board and the General Officers of the International Union of Operating Engineers. They shall audit the books of the General Secretary-Treasurer at least once every six months and report thereon to the General Executive Board. They shall render a report of their duties to the General Convention. They shall take an annual inventory of the property belonging to the International Union of Operating Engineers and shall see that the finances of the International Union are safeguarded by proper bonds. They shall audit and examine all bills, expenditures and expense accounts and all receipts of the General Office. All vouchers for the payment of funds from the general treasury shall be signed by not less than two trustees, one of whom must be the Chairman of the Board. They shall recommend to and advise the General Executive Board and the General Officers upon bookkeeping methods and accounting systems. They shall be the custodians of all bonds of General Officers. Upon the termination of office of any General Officer or upon a vacancy occurring among the General Officers, they shall receive and hold the funds, books, papers, documents and other property in the possession of the said officer or officers and turn the same over to the General Officer succeeding to said position upon being given proper receipt. They shall perform such other duties

as from time to time may be delegated and assigned to them by the General Convention, the General Executive Board or the General President.

ARTICLE X

MEMBERSHIP

Qualifications

Art. X. Section 1. Any engineer engaged in the craft over which this organization exercises craft jurisdiction, or other person who may qualify to become a junior or apprentice therein, and any engineer engaged as an inspector of boilers or other machinery or as an examiner of engineers, may upon application, election and initiation in the manner and form required in this Constitution, become a member of the International Union of Operating Engineers. No person who is otherwise eligible under the qualifications fixed herein, but who is opposed to organized labor, shall be admitted to membership.

No applicant for membership shall apply to or be elected by any Local Union other than the one within the jurisdiction in which he is employed unless such Local Union shall consent to his affiliation therewith.

Minimum and Maximum Initiation Fees and Dues

Art. X. Section 2. The minimum initiation fee in all Local Unions shall be not less than Five ($5.00) Dollars per applicant. The minimum dues in all Local Unions shall be not less than Two ($2.00) Dollars per month per member. Maximum initiation fees and maximum dues charged

by Local Unions to their applicants or members may, from time to time, be fixed by the General President.

ARTICLE XI

INCOME OF INTERNATIONAL UNION

Per Capita Tax

Art. XI. Section 1. The Financial Secretary of each Local Union must pay the General Secretary-Treasurer a per capita tax of One ($1.00) Dollar per month for each member in his Local Union and its subdivisions who has not been reported by him to the General Secretary-Treasurer as suspended, withdrawn, transferred or expelled. Per capita tax must be paid for the month in which a member receives a withdrawal card, by the Local Union from which he has received such withdrawal card. The per capita tax must be remitted by the Financial Secretary to the General Secretary-Treasurer on or before the fifteenth day of the month following that for which it is due. It shall be accompanied by a report in a form prescribed by the General Secretary-Treasurer and signed by the Financial Secretary of the Local Union. The General Secretary-Treasurer shall immediately return a receipt therefor to each Financial Secretary, together with a dues stamp for each member for whom the per capita tax has been paid. The President of the Local Union must read this receipt at the next meeting of the Local Union, and it must be placed in the files of the Local Union.

Distribution of Per Capita Tax

Art. XI. Section 2. The General Secretary-Treasurer shall distribute and deposit the per capita tax received by him for each member as follows:

(a) Defense Fund--fifteen (15) cents.

(b) Journal Fund—five (5) cents.

(c) Death Benefit Fund—twenty-five (25) cents.

(d) General Fund for general expenses and such other purposes as the General Executive Board may from time to time determine—fifty-five (55) cents.

Charter Fees and Assessments and Their Distribution

Art. XI. Section 3. Before the issuance of any charter to a Local Union, the Financial Secretary in the cases of existing Local Unions and the applicants for charters in all other instances shall forward to the General Secretary-Treasurer the following:

(a) Charter Fee—Twenty-five ($25.00) Dollars.

(b) Assessment for each signatory to application—One ($1.00) Dollar.

The proceeds of the charter fee shall be deposited in the General Fund by the General Secretary-Treasurer. The proceeds of the assessment shall be deposited in the Defense Fund by the General Secretary-Treasurer. The same charter fee shall be paid and the same procedure shall be followed in the case of the issuance of a charter to any other subdivision of the International

Union, except that in the case of subdivisions of Local Unions the charter fee paid by Local Unions shall be Ten ($10.00) Dollars.

Initiation Fee Taxes and International Initiation Fees and Their Distribution

Art. XI. Section 4. The Financial Secretaries of Local Unions shall forward to the General Secretary-Treasurer with the report required by this Article for the month in which new members have been initiated into membership in the Local Union or any subdivision thereof, the following for each newly initiated member:

(a) Initiation Fee Tax—Twenty (20) per cent upon the initiation fee established as of the date of reporting the new member.

(b) International Initiation Fee—Thirty-five (35) cents.

The initiation fee tax shall be deposited by the General Secretary-Treasurer as follows: Fifty (50) per cent in the General Fund and Fifty (50) per cent in the Defense Fund. The International initiation fee shall be deposited by the General Secretary-Treasurer in the General Fund.

Reinstatement Assessments

Art. XI. Section 5. The Financial Secretaries of Local Unions shall forward to the General Secretary-Treasurer with the report required for the month in which members are reinstated the following:

(a) Five ($5.00) Dollars for each member reinstated to membership who has held a withdrawal card as provided in Article XV.

(b) Five ($5.00) Dollars for each member reinstated to membership after suspension or expulsion, plus per capita tax for each month required, and such other charges as may be provided for in Article XXIII.

The General Secretary-Treasurer shall deposit the assessments referred to in this section in the Defense Fund.

Other Income

Art. XI. Section 6. The proceeds from the supplies required for the work of Local Unions and all other income provided for in this Constitution but not mentioned in this Article shall be deposited by the General Secretary-Treasurer in the General Fund unless otherwise directed.

Other Fees, Taxes and Assessments

Art. XI. Section 7. Other fees, taxes, assessments and other charges for obtaining income for the International Union for any purpose may be increased, decreased, changed or added from time to time.

ARTICLE XII

TERRITORIAL JURISDICTION

Art. XII. Section 1. The territorial jurisdiction of any Local Union heretofore or hereafter established shall be such as described on the face of the charter issued to such Local Union, together with any limitations, extensions and restrictions regarding such territorial jurisdiction as may be added thereto. No charter to a local Union shall hereafter be granted unless the same

shall distinctly state upon its surface a description of the territorial jurisdiction conferred, qualified by a statement that such territorial jurisdiction so conferred may be amended, restricted, or enlarged by the International Union of Operating Engineers.

ARTICLE XIII

CRAFT JURISDICTION

Division of Jurisdiction

Art. XIII. Section 1. The International Union of Operating Engineers shall exercise and maintain jurisdiction over all persons engaged in the following crafts:

(a) Stationary Engineers' Craft Jurisdiction:

All persons engaged in supervising, controlling, operating or assisting in operating all boilers (irrespective of pressure), engines, turbines, motors, internal combustion engines, pumps, air compressors, generators, ice and refrigerating machines, air-conditioning units and plants, fans, siphons, bridges (including turntable, jackknife and span-lift type), also automatic and power-oiling pumps and any and all automatic and power-driven machines and engines (including all appurtenances) used on mechanically-operated steam boilers and in the handling, preparing and delivery of fuel from storage bins, yards, or reservoirs up to and into combustion chambers (irrespective of the motive power), and any and all operating repairs necessary for proper and continuous operation of all plants, machinery and engines; the supervision of all mechanical operation and any and all appurtenances connected with and used in power plant operation in all

commercial and industrial activity, including railroads, utilities, hydroelectric and municipal power plants, and any and all power-driven engines or units connected with and operating water, filtration and chlorine plants, garbage and sewage disposal plants, breweries, distilleries, canneries, reduction plants, legitimate and motion picture theatres, ice and cold storage plants, coal yards, dairies, creameries, and other dairy products plants, office and municipal buildings, schools, hotels, apartment hotels and apartment houses, hospitals, department stores, laundries, metal and other junk yards and junk segregating plants, oil drilling, refining and producing plants (including control of pressure and temperature of gases, liquids and otherwise), and pipe line pumping and boosting stations; the operation of valves gates, locks and all machinery on dams or spillways; and bakeries, paper and pulp mills, newsprint plants, shipbuilding and ship repair yards, and any and all other industrial and manufacturing plants operating machines and engines and other appurtenances (irrespective of motive power).

(b) Hoisting and Portable Engineers' Craft Jurisdiction:

All persons engaged in supervising, controlling, erecting, dismantling and repairing, operating or assisting in operating, erecting, dismantling, or the repairing of, all hoisting and portable machines, all refrigerating machines or units and engines used on open and heavy construction work; all hoisting and portable machines and engines used in or upon wrecking, digging, boring, building and erecting foundations, buildings, tunnels and subways, dams, reservoirs, disposal plants, bridges, railroads, streets (paving and

repair), road building construction (including grading and repair), sewers, water, gas and oil lines, allotment development construction, harbor and river dredging, the construction and repair of all docks, wharves, piers, shipyards, and seawalls; all sand, gravel and stone pits; quarries and material yards (permanent and temporary), sand, rock and gravel screening machines; motor generators (when used for welding and cutting or for converting or transforming electric currents, irrespective of their motive power); all machines used to sweep, clean and remove debris and snow from streets and roads; all mine hoists, telphers, grab buckets, pumps, siphons, pulsometers, generators, concrete mixers (irrespective of capacity), concrete pumps of all sizes and capacities, stone crushers, air compressors, all water-test and blast-hole drilling machines; all sand-blasting and other machines and boilers used in the cleaning and washing of buildings; all boilers (irrespective of size) used for furnishing temporary heat on buildings under construction, or for the heating of materials, or heating water, or furnishing steam for the operation of all machines, engines and other appurtenances herein specified; all locomotive, tractor and truck type cranes; all derricks, boom hoists (of all descriptions and capacities), and automatic hoists; house and all elevators (permanent and temporary) used for hoisting building material or lowering debris or carrying workmen from floor to floor in buildings under construction and repair; all street rollers, steam and other motive power shovels; all Le Tourneau and other types of scoops, pull shovels, mucking machines, draglines and cableways; all clam-shell and orange peel buckets when used in connection with any machine or with derrick or boom hoist for excavating, handling,

storing, loading or unloading materials; all land and floating pile drivers, floating derrick barges and boats, floating and self-propelled dredges and rock drilling plants; all dinkey and standard locomotives, derrick cars, tractors and all tractor-propelled machinery; all power and elevator graders, scarifiers, bulldozers, Barber Green loaders, all trenching and ditching machines, all mechanical hoe-type machines, back fillers and conveyors; all cranes, derricks, machines, engines and boilers used in asphalt and concrete mixing plants and all other engines and machines (irrespective of motive power) used on building and construction work, or in the loading, unloading or storage of commodities at or in terminals.

Conflict of Jurisdiction

Art. XIII. Section 2. In cases where there shall be conflict between the craft jurisdiction of the Stationary Engineers' Branch and the craft jurisdiction of the Hoisting and Portable Engineers' Branch of this organization and one of said branches has already assumed certain craft jurisdiction of the other branch and has organized the same and entered into contractual relations with third parties involving such craft jurisdiction, such status may remain as now in effect.

ARTICLE XIV

CHARTERS

Classification of Charters

Art. XIV. Section 1. Charters of the International Union of Operating Engineers may be granted to Local Unions, Local Joint Executive

Boards, local, State and Provincial Organizations, to Local Unions for Junior and Apprentice Engineers' Subdivisions and Branch Engineers' Subdivisions, and to such other subdivisions as may from time to time be authorized and established.

Application for Charters

Art. XIV. Section 2. An application for a charter of a Local Union shall be upon the form prescribed by the International Union of Operating Engineers and shall be signed by not less than fifteen (15) engineers, none of whom shall be members of the International Union, which requirements may be changed by the International Union. The requirements for all other applications for charters shall be established by the General Executive Board.

Qualification of Applicants

Art. XIV. Section 3. Upon receipt of an application for a charter, the General President shall proceed to satisfy himself that the applicants are qualified, and if found to be so he shall direct the General Secretary-Treasurer to issue the charter. In the formation of new Local Unions the members thereof shall be charged such charter fees, entrance fees and organization fees as the International Union shall establish.

Junior and Apprentice Subdivisions and Branch Subdivisions

Art. XIV. Section 4. Local Unions as such may make application for restricted or sub-charters covering junior and apprentice engineers and branch engineers in such manner and form as prescribed by the International Union and the said restricted or sub-charters shall confer no

greater craft or territorial jurisdiction than that held by the parent Local Union making such application.

Government of Junior and Apprentice Engineers' Subdivisions and Branch Engineers' Subdivisions

Art. XIV. Section 5. Any Junior and Apprentice Engineers' Subdivision or Branch Engineers' Subdivision heretofore or hereafter created by the restricted or sub-charters referred to in this Article, shall function under the direction and control of the parent Local Union to which the same belongs. They shall be accountable to and function under their parent Local Union and they shall respond to, be under the control of and be governed by the said parent Local Union; provided, however, that the members of the said Junior and Apprentice Engineers' Subdivision and the Branch Engineers' Subdivision, if in good standing as required by the International Union and credited with their per capita tax paid to and remitted by the parent Local Union, may vote upon such referendums as shall be submitted to the parent Local Union for them by the International Union. They shall be entitled to such participation in the Death Benefit Fund as may be provided for them by the International Union. Said members shall be without vote in their parent Local Union save and except upon such matters as the parent Local Union may consent to; provided, however, that they may not vote, even should such consent be granted, in any election of officers of the parent Local Union, nor shall they hold office in their parent Local Union, nor shall they elect officers in their subdivisions.

Definition of Junior and Apprentice Engineers

Art. XIV. Section 6. Junior and Apprentice Engineers are defined as including all persons who aspire through training, effort and application to become masters of the craft over which this organization exercises craft jurisdiction and who begin as apprentices under such tutelage and guidance as a parent Local Union may direct.

Definition of Branch Engineers

Art. XIV. Section 7. Branch Engineers are defined as those persons who, qualified by craft to become members of the International Union of Operating Engineers, may desire to be constituted a Subdivision thereof through the application of a parent Local Union and who are employed in any class of employment existent within the territorial jurisdiction of a parent Local Union which class of employment shall not have become organized nor be engaged in employing members of said parent Local Union.

Property of Local Unions

Art. XIV. Section 8(a). The supplies furnished with a charter for a Local Union will be a voucher and receipt book, one seal, Financial Secretary's book, Treasurer's book, one minutes book, one day book, three rituals, one hundred letter heads, one hundred envelopes (stock), fifty application cards and fifteen copies of the Constitution. Membership books, the charter, seal and all books and other paraphernalia shall be the property of the International Union and shall be delivered to the General President of the International Union upon demand by the General Executive Board, or by order of the General Convention.

Art. XIV. Section 8(b). If at any time a Local Union or other subdivision shall withdraw, lapse, dissolve, be suspended, placed under supervision or expelled from the International Union, or shall have its charter revoked, all of its real and personal property, paraphernalia, books, charter, seal, records, card indexes and funds shall immediately revert to the International Union and the General President shall at once, in person or by deputy, take possession of such property, paraphernalia, books, charter, seal, records, card indexes and funds of said Local Union or other subdivision, all of which he or his deputy shall receipt for, and he or his deputy shall forward the same to the General Office or hold as directed.

Art. XIV. Section 8(c). The officers and members of said Local Union or other subdivision, individually and collectively, shall be held strictly responsible for all such property, paraphernalia, books, charter, seal, records, card indexes and funds until they are turned over to the General President or his authorized representative and receipted for.

Art. XIV. Section 8(d). They shall be individually and collectively accountable therefor to the International Union, and suit may be instituted through the General President to recover the real and personal property, paraphernalia, books, charter, seal, records, card indexes and funds, or for money damages if any of them have been concealed or destroyed.

Art. XIV. Section 8(e). All supplies necessary for the proper functioning of Local Unions shall be uniform, and all Local Unions must secure such supplies from the General Secretary-Treasurer, application to be made therefor, on the official order blank, accompanied by the neces-

sary monies to cover the cost of the same, and no Local Union, under penalty of expulsion, shall furnish any other Local Union with any of such supplies, nor use any such supplies unless furnished by the International Union.

Form of Charter

Art. XIV. Section 9. No charter to a Local Union shall hereafter be granted unless the same shall distinctly state upon its face a description of the territorial and craft jurisdiction conferred, qualified by a statement that such territorial and craft jurisdiction so conferred may be amended, restricted or enlarged by the International Union.

The form of the charters to be issued in accordance with this Article shall state at the head thereof:

"INTERNATIONAL UNION

of

OPERATING ENGINEERS

Affiliated with American Federation of Labor
Metal Trades Department
Building Trades Department"

Thereafter the forms of the charters shall be in substance as follows:

(a) Local Unions.

"LOCAL UNION CHARTER

"TO WHOM IT MAY CONCERN, GREETING:

"WHEREAS, a petition has been received praying that a Charter be granted for the formation of a Local Union of the INTERNATIONAL UNION OF OPERATING ENGINEERS to be located at

.....

.....

.....

with the following Territorial Jurisdiction:.....

.....

.....

.....

.....

.....

.....

THE INTERNATIONAL UNION OF OPERATING ENGINEERS hereby retaining the right to amend, restrict or enlarge said territorial jurisdiction;

"KNOW YE, that acting under the authority vested in us by the Constitution and Laws of our INTERNATIONAL UNION, we desire and cause this Charter to be issued for the institution of a

Local Union to be known as .....

.....

Local Union No. ..... ; with the following Craft Jurisdiction: .....

.....

.....

.....

.....

.....

.....

.....

.....

THE INTERNATIONAL UNION OF OPERATING ENGINEERS HEREBY retaining the right to amend, restrict or enlarge said craft jurisdiction; and to bear date of .....

.....

and by virtue of this Charter to do and perform such acts as are prescribed in the Constitution, Laws and Rules of the INTERNATIONAL UNION OF OPERATING ENGINEERS.

"THE INTERNATIONAL UNION hereby declares its right to suspend or revoke this Charter for any neglect or refusal to perform the duties required by the Constitution and Laws of this organization, and should the aforesaid Local Union be dissolved or forfeit this Charter, then all property, books, papers and monies shall be

transferred to the General Office of the International Union of Operating Engineers.

"IN WITNESS WHEREOF, we do now cause our Signatures and the General Seal of the International Union of Operating Engineers to be affixed hereto.

(SEAL)

INTERNATIONAL UNION OF OPERATING ENGINEERS

_____

General President.

_____

General Sec'y-Treasurer."

(b) Junior and Apprentice Engineers' Unions.

"JUNIOR AND APPRENTICE ENGINEERS' CHARTER

"TO WHOM IT MAY CONCERN, GREETING:

"WHEREAS, a petition has been received from a duly chartered and good standing Local Union of Operating Engineers No. ..... of ....., praying that a Junior and Apprentice Engineers' Charter be granted for the organizing and affiliation of Junior and Apprentice Engineers, to be governed by and under the complete control of Local Union No. ..... of the International Union of Operating Engineers, as provided for in the Constitution, Laws and Rules of the International Union;

"KNOW YE THEREFORE, that acting under

the authority vested in us in accordance with the Constitution, Laws and Rules of our International Union, we approve and cause this Junior and Apprentice Engineers' Charter to be issued which shall bear date of ..... and be known as Local Union ..... A. By virtue of the issuance of said Junior and Apprentice Engineers' Charter to Local Union No. ..... , the members enrolled under said Junior and Apprentice Engineers' Charter shall enjoy only a restricted membership in and under the government and control of said Local Union as directed by the Constitution, Laws and Rules of the International Union of Operating Engineers; but said restrictions through rules and regulations invoked by the governing Local Union to which this Junior and Apprentice Engineers' Charter is issued, shall in no way or manner abridge or interfere with the rights and privileges of said junior or apprentice engineers enrolled hereunder (1) to vote in any and all referendums submitted to the membership of the International Union in accordance with the Constitution, Laws and Rules of the International Union; (2) to transfer from the status of a junior or apprentice engineer to the status of a full journeyman engineer; or (3) the right to the payment of death benefits as decreed under the Constitution, Laws and Rules of the International Union.

"THE INTERNATIONAL UNION hereby declares its right to suspend or revoke this Junior and Apprentice Engineers' Charter for any neglect or refusal of the governing Local Union to perform the duties required by the Constitution, Laws and Rules of the International Union, and should the aforesaid Junior and Apprentice Engineers' Local Union be dissolved or its Charter

forfeited, or should the governing Local Union through regular decree surrender same, then all property, books, papers and monies accumulated by the governing Local Union during the existence and life of this Junior and Apprentice Engineers' Charter shall remain as the property of the governing Local Union, unless the Charter of the governing Local Union becomes suspended or revoked, in which event all property, books, papers and monies of the governing and Junior and Apprentice Engineers' Local Unions shall be surrendered to the General President.

"Suspension or the revocation of the governing Local Union's Charter carries with it the suspension or the revocation of this Junior and Apprentice Engineers' Charter.

"IN WITNESS WHEREOF, we do now cause our Signatures and the General Seal of the International Union of Operating Engineers to be affixed hereto.

(SEAL)

INTERNATIONAL UNION
OF
OPERATING ENGINEERS

_____
General President.

_____
General Sec'y-Treasurer."

(c) Branch Engineers' Union.

"BRANCH ENGINEERS' CHARTER

"TO WHOM IT MAY CONCERN, GREETING:

"WHEREAS, a petition has been received from Local Union No. ....., of .....

....., praying that a Branch Engineers' Charter be granted for the purpose of organizing and affiliating those persons qualified by craft who are employed in any class of employment existent within the territorial jurisdiction of this Local Union, which class of employment has not become organized; the membership of said Branch Engineers' Subdivision to be restricted and governed by and under the complete control of Local Union No. ..... of the INTERNATIONAL UNION OF OPERATING ENGINEERS.

"KNOW YE, that acting under the authority vested in us in accordance with the Constitution and Laws of our INTERNATIONAL UNION, we approve and cause this Branch Charter to be issued which shall bear the date of .....

..... and be known as Branch Engineers' Subdivision .....

.....; and by virtue of its issuance to Local Union No. .....

..... the members enrolled thereunder shall enjoy only a restricted membership in and under the government and control of said Local Union, but said restrictions through rules and regulations as may be adopted and invoked by said governing Local Union to which this Branch Engineers' Charter is issued, shall in no way or manner abridge or interfere with the rights and privileges of the members

enrolled hereunder (1) to vote in any and all referendums submitted to the membership of the International Union in accordance with the Constitution, Laws and Rules of the International Union; (2) to transfer from the status of restricted membership to the status of a full and unrestricted membership in the governing Local Union through application in the manner as prescribed under the laws and rules of the governing Local Union; (3) the right to the payment of death benefits as is decreed under the Constitution, Laws and Rules of the International Union governing the payment of same.

"THE INTERNATIONAL UNION hereby declares its right to suspend or revoke this Branch Engineers' Charter for any neglect or refusal of the governing Local Union to perform the duties required for the proper supervision and government over the affairs of this Branch Engineers' Subdivision and those required by the Constitution, Laws and Rules of the International Union, and should the aforesaid Branch Engineers' Subdivision be dissolved or its charter forfeited, or should the governing Local Union through regular decree surrender same, then all property, books, papers and monies accumulated by the governing Local Union during the existence of this Branch Engineers' Charter shall remain as the property of the governing Local Union, unless the charter of the governing Local Union becomes suspended or revoked, then all property, books, papers and monies of the governing and Branch Engineers' Subdivision shall be surrendered to the General President. Suspension or the revocation of the governing Local Union's charter carries with it the suspension or the revocation of this Branch Engineers' Charter.

"IN WITNESS WHEREOF, we do now cause our Signatures and the General Seal of the International Union of Operating Engineers to be affixed hereto.

(SEAL)

INTERNATIONAL UNION
OF
OPERATING ENGINEERS

_____
General President.

_____
General Sec'y-Treasurer."

(d) State or Provincial Branch Charters.

_____ BRANCH

Charter

FOR THE _____ OF

_____

"TO WHOM IT MAY CONCERN, GREETING:

"WHEREAS, a petition has been received from a sufficient number of duly affiliated and good standing Local Unions of the International Union of Operating Engineers in the _____ of _____

....., which petition has been approved by the General President, praying for the establishment of a ..... Branch Charter for the purpose of assisting the International Union and all good standing Local Unions in that ..... in organizing, protecting and strengthening said Local Unions and assisting them in fostering and promulgating legislation covering license laws and such other legislative acts as will improve the economic status of the membership of the International Union in said .....;

"KNOW YE THEREFORE, that under the authority vested in us in accordance with the Constitution, Laws and Rules of the International Union of Operating Engineers, we approve and cause this ..... Branch Charter to be issued which shall bear date of ..... and shall be known as ..... BRANCH CHARTER FOR THE ..... OF .....' By virtue of the issuance of this Charter, all of the officers and affiliated Local Unions, members of the ..... Branch for the ..... of ..... are held responsible for compliance with all laws governing the International Union of Operating Engineers and shall perform all of the acts and duties and comply with all of the regulations as prescribed in the Constitution, Laws and Rules of the International Union of Operating Engineers.

"THE INTERNATIONAL UNION reserves the right to suspend or revoke this Charter for any neglect or refusal on the part of this ..... Branch, its officers or members, to perform the duties required by the Constitution, Laws and Rules of the International Union, and in the event this ..... Branch is dissolved, forfeits its char-

ter, or its charter is suspended or revoked, then all of the property, books, papers, records and monies of this ..... Branch shall immediately thereafter be transferred to the General Office of the International Union of Operating Engineers.

"IN WITNESS WHEREOF, we do now cause our Signatures and the General Seal of the International Union of Operating Engineers to be affixed hereto.

(SEAL)

INTERNATIONAL UNION
OF
OPERATING ENGINEERS

General President.

General Sec'y-Treasurer."

The form of all charters to be issued to any other subdivision of the International Union, other than those subdivisions herein specifically stated, shall in substance conform to such of the foregoing forms of charters as shall be applicable and shall in all respects be in accordance with the Constitution and Laws of the International Union of Operating Engineers.

ARTICLE XV

TRANSFER AND CLEARANCE CARDS, JOURNEYMEN ENGINEERS' TEMPORARY PERMITS, WITHDRAWAL CARDS AND GENERAL OFFICE MEMBERSHIP

Transfer Cards

Art. XV. Section 1. When a Local Union has been dissolved, suspended, or when its charter has been revoked or surrendered or otherwise become inoperative, any member in good standing of such Local Union may, through the General Secretary-Treasurer, upon application to and by consent of a majority of the General Executive Board, be given a transfer card which will entitle him to make application for admission to the nearest Local Union in his vicinity.

Clearance Cards

Art. XV. Section 2(a). Any member desiring a clearance card for the purpose of transferring his membership to another Local Union shall apply to the Financial Secretary of his Local Union; and if such member is in good standing in his Local Union, and no charges are pending against him, the Financial Secretary shall grant a clearance card upon the payment by the member of any unpaid dues, or other obligations, plus One ($1.00) Dollar for the clearance card. The Financial Secretary of said Local Union, upon issuing said clearance card, shall report the same at the next meeting of the Local Union.

Art. XV. Section 2(b). If an applicant for a clearance card has been a member of the International Union for less than six months, then upon the granting of a clearance card he shall pay to said Local Union the sum of Fifteen ($15.00) Dollars as a fee therefor.

Art. XV. Section 2(c). Thereafter a member obtaining a clearance card must present the same to the Local Union into which he desires to transfer, for acceptance by it, and the matter shall be referred to a committee of such Local Union, which shall report to the Local Union on the character and qualifications of the member making application for transfer, and said Local Union may, by a majority vote, accept or reject said clearance card, such acceptance or rejection to be entirely within the discretion of the Local Union.

Art. XV. Section 2(d). No member desiring to transfer into another Local Union shall negotiate for, accept or commence work until his clearance card has been accepted or a Journeyman Engineer's Temporary Permit shall have been issued to him as hereinafter provided. If and when his clearance card is accepted, he shall be governed by the wage scale rules and by-laws of said Local Union and if the Local Union into which such member enters has a higher initiation fee and the by-laws of such Local Union require it, he may be required to pay the amount of the difference to the receiving Local Union, in which event, the initiation fee tax on such difference shall be charged and collected by the General Secretary-Treasurer. In the event the said by-laws waive the payment of this difference, then there shall be no initiation fee tax charged or collected by the General Secretary-Treasurer.

Art. XV. Section 2(e). Local Unions shall purchase clearance cards from the General Secretary-Treasurer and said cards shall be drawn up by the General Secretary-Treasurer in duplicate and designated "Coupon No. 1" and "Coupon No. 2." Upon entering the Local Union into which he may transfer the member shall sign both coupons, Coupon No. 1 being retained by the Financial Secretary of the Local Union into which he transfers and Coupon No. 2 being transmitted by the Financial Secretary of the Local Union into which he has transferred to the Financial Secretary of the Local Union which issued the card. Thereafter the Financial Secretary of the Local Union into which the member has transferred, shall, on the next monthly report, set forth the name and membership number of the member so admitted.

Journeymen Engineers' Temporary Permits

Art. XV. Section 3(a). Members of one Local Union shall not seek employment, be employed, or remain at work at the craft within the territorial jurisdiction of another Local Union without the consent of such other Local Union, which consent may be evidenced by its acceptance of the clearance card presented to it by the member involved, as provided in the constitution or by the issuance of the temporary permit hereinafter described. If the member involved does not present a clearance card to such other Local Union, or the Local Union to which the clearance card is presented fails to act thereon, or the Local Union to which the clearance card is presented acts thereon and refuses to affiliate such member, and the Business Representative of such other Local Union, in such cases, shall thereupon consent to the issuance of the temporary permit (described herein) then the member involved shall be entitled to receive and required to secure succes-

sively, during the period within which said consent be granted and his work continue, such number of weekly journeymen engineers' temporary permits if he is a hoisting and portable engineer, or monthly journeymen engineers' temporary permits if he is a stationary engineer, as shall be issued to him by the said Business Representative under the regulations established by the General Executive Board. Such permits shall, for the period issued, allow the holder thereof to seek, accept, and hold employment within the territorial jurisdiction of such other Local Union out of which said temporary permits shall be issued, but subject always to such regulations as shall be imposed thereon by the General Executive Board.

Prior Payments of Current Dues Required

Art. XV. Section 3(b). The consent referred to in this Article shall not be granted by the said other Local Union or its Business Representative, nor shall permit dues be collected from or temporary permits be issued to, any said member who shall not, at the time when requesting a permit so to work, have had his current monthly dues paid into the Local Union to which he belongs, evidenced by the presentation of his dues book with the current monthly dues stamp duly affixed and canceled by the Financial Secretary of the Local Union to which he belongs. Upon the issuance to him of the said temporary permit the same shall, in the manner provided, be affixed to the said member's dues book and shall always be available for inspection and certification as to its authenticity.

Continuance of Work Under Permit

Art. XV. Section 3(c). No member of this organization shall be permitted to remain at work at the craft in the territorial jurisdiction

of any other Local Union than the one to which he shall belong for a longer period of time than that covered by the temporary permit issued to him, nor shall any such member working under the authority conferred by a temporary permit be removed from said work or replaced by a member of the Local Union issuing the said temporary permit until the expiration of the period for which the said temporary permit was issued, unless such removal be for a good and sufficient cause.

Minimum Dues Required

Art. XV. Section 3(d). Each Local Union issuing or required to issue the temporary permits described in this Article shall charge to and collect from those members within its territorial jurisdiction, to whom this Article shall apply, minimum weekly permit dues of $2 in the case of each hoisting and portable engineer, and minimum monthly permit dues of $2 in the case of each stationary engineer, and shall thereupon issue to each such member the Journeyman Engineer's Temporary Permit provided.

Permits Required by Applicants

Art. XV. Section 3(e). Each Local Union permitting its applicants for membership to engage at the craft upon work under contract with, or control of, said Local Union, shall charge to and collect from each such applicant, and each such applicant shall be required to pay to it for the period involved, minimum weekly permit dues of $2 in the case of each applicant hoisting and portable engineer or apprentice, and minimum monthly permit dues of $2 in the case of each applicant stationary engineer or apprentice, and shall thereupon issue to each such applicant a

temporary permit similar to the Journeyman Engineer's Temporary Permit provided in this Article.

Form of Permit and Distribution of Copies

Art. XV. Section 3(f). The form of the Journeyman Engineer's Temporary Permit and the permits issued to applicants shall be substantially as follows:

INTERNATIONAL UNION OF OPERATING ENGINEERS

Imprint of Insignia

Date ..... 19....

Received from .....

Register No. .....

..... Dollars

For Temporary Permit Dues for week ending month

..... 19....

Member of Local Union No. .....

City of ....., State of .....

Dues paid for Month of ..... $.....

Local Union No. .....

Representative.

In case of applicants for membership the information required above with reference to register number and Local Union data shall be omitted.

Each permit shall be printed in triplicate labeled "Original," "Duplicate" and "Triplicate." The original shall be issued to the member, the duplicate shall be forwarded by the Financial Secretary to the General Secretary-Treasurer with the report required and the triplicate shall remain bound in the Permit Book.

Printing and Distribution of Permit Books

Art. XV. Section 3(g). The General Secretary-Treasurer shall cause the temporary permits described herein to be printed in triplicate, serially numbered and bound in convenient books of 25 and 50 triplicate permits, and he shall charge to and collect in advance from the Local Unions ordering the same the following:

For each Book of 25 Triplicates, $12.50 per book.
For each Book of 50 Triplicates, $25.00 per book.

All receipts from the sale of the said temporary permits by the General Secretary-Treasurer shall be distributed by him and be deposited in the following proportions and in the following funds:

50% thereof in the Defense Fund.
50% thereof in the General Fund.

Art. XV. Section 3(h). The General Executive Board is authorized and empowered to establish, amend, alter, and administer the terms, conditions, and rates under which the temporary permits herein provided shall be issued and enforced. No temporary permit as described in this article shall be issued to or used by any person who is not, at the time, either a member of the International Union of Operating Engineers or an applicant for membership therein and the attempted issuance of such a permit above referred to by any officer or employe of the organization to

any other person than those described herein shall be unauthorized, null and void.

Withdrawal Cards

Art. XV. Section 4(a). Any member of the International Union who ceases to perform the work of an engineer, may, at the option of his Local Union, be given a withdrawal card; but no withdrawal card shall be issued to any member of the International Union who is employed as an engineer. This section, however, shall not apply to any members of the International Union who are serving or acting in any capacity for a Local Union or the International Union, whose duties prevent them from working at the trade, or engineers who hold positions as inspectors of boilers or other machinery, or examiners of engineers.

Art. XV. Section 4(b). A fee of not to exceed Five ($5.00) Dollars may be charged for each withdrawal card.

Art. XV. Section 4(c). Local Unions shall purchase withdrawal cards from the General Secretary-Treasurer. When a holder of such card desires to reinstate himself in full good standing membership he shall present this card and it shall be acted upon in the same manner as hereinbefore provided in the case of clearance cards.

Art. XV. Section 4(d). Any member entering a Local Union on a withdrawal card shall pay the difference in initiation fee as hereinbefore provided in the case of clearance cards, and if he shall enter said Local Union within one (1) year of the date of the issuance of the withdrawal card he shall be required to pay all dues

and assessments accruing during such period of time in the Local Union which issued the same, and said dues and assessments shall be paid to the Local Union admitting the member and shall be forwarded to the Local Union which issued the withdrawal card; and at the same time he shall pay an assessment of Five ($5.00) Dollars or such amount as may be fixed by the General Executive Board, and a similar amount for each successive year, or part thereof, to the Local Union admitting him, which it shall forward to the General Secretary-Treasurer, who shall place the same in the Defense Fund. And a Local Union may make similar assessments. All members of the International Union who have been granted withdrawal cards by their Local Unions may continue to be members in good standing in the Death Benefit Fund by paying in advance and directly to the General Secretary-Treasurer the sum of Six ($6.00) Dollars per annum, Three ($3.00) Dollars of which shall be placed in the Death Benefit Fund and Three ($3.00) Dollars of which shall be placed in the General Fund; but he shall not be in good standing in any other respect.

Art. XV. Section 4(e). However, members holding withdrawal cards and desiring to continue in good standing in the Death Benefit Fund must make application to the General Secretary-Treasurer within thirty (30) days from the date the withdrawal card was issued and he must be paid up to and including the month of his death in order that his beneficiary may be entitled to the Death Benefit. In the event any member granted a withdrawal card violates any of the Articles of this Constitution any Local Union or the General Executive Board shall cancel said withdrawal card and he and his beneficiaries

automatically lose his and their rights under the Death Benefit Fund.

General Office Membership

Art. XV. Section 5. When a Local Union has lapsed, been dissolved, suspended or had its charter revoked or has otherwise become inoperative, any member thereof who was in good standing at the time of such dissolution, suspension or revocation shall become a member of the General Office Membership provided that within thirty (30) days from the date of such dissolution, suspension or revocation he pays to the General Secretary-Treasurer any unpaid dues or other obligation due to said Local Union from him, or due to the International Union from said Local Union in his behalf, including per capita tax, together with a fee of Five ($5.00) Dollars, or such other fee as may be fixed by the General Executive Board, and at the same time makes application to the General Secretary-Treasurer for a transfer card to another Local Union as provided for in Section 1 of this Article; and he shall remain in the General Office Membership only until his transfer card is accepted by another Local Union, and while a member of the General Office Membership he shall pay dues to the General Office, monthly in advance, in the amount of Five ($5.00) Dollars per month or such other amount as may be fixed by the General Executive Board, twenty-five (25) cents of which shall be placed in the Death Benefit Fund, the remainder to go into the General Fund. The General Secretary-Treasurer may suspend or expel any such member for non-payment of dues to the General Office or for any violation of the Constitution.

Junior and Apprentice Engineers' Subdivision Clearance Cards

Art. XV. Section 6. Any member of a Junior and Apprentice Engineer's Subdivision desiring a Junior and Apprentice Engineers' Subdivision clearance card for the purpose of transferring his membership to another Junior and Apprentice Engineers' Subdivision of another Local Union shall do so in the same manner as prescribed in Section 2 of this Article, provided the Local Union in which he is a member of the Junior and Apprentice Engineers' Subdivision shall, by a majority vote, consent to the issuance of said clearance card.

ARTICLE XVI

DISCIPLINE AND EXPULSION IN GENERAL

Penalty for Issuing Defamatory Literature

Art. XVI. Section 1. In addition to the provisions of this Constitution setting forth the causes and the manner and form in which Local Unions, officers and members thereof may be disciplined and penalties may be invoked, any Local Union, subdivision or member thereof publishing or circulating literature of a defamatory nature against any candidate for office, or officer, may be tried by the General Executive Board upon charges filed with it, and upon conviction, may be disciplined or expelled as the General Executive Board may determine.

Penalty for False Applications

Art. XVI. Section 2. Any person making a misrepresentation or mis-statement in his application for membership, or who shall belong to more than one Local Union of this organization, shall on trial therefor, and conviction thereof, be expelled from the International Union of Operating Engineers.

General Executive Board May Prosecute

Art. XVI. Section 3. Any violation of the Constitution, Laws, Obligation and Ritual, or the rules, regulations and edicts issued by any officer or subdivision thereunto authorized by any member, subdivision or officer, may, if not prosecuted by the subdivision thereunto authorized, or if no provision has been made therefor, be prosecuted, heard and penalized by the General Executive Board.

Penalty for Communism, Disruption, Radicalism, Etc.

Art. XVI. Section 4. Any member who shall be guilty of belonging to the Communist Party or who shall subscribe to the principles of communism or similar doctrines, or who shall engage in, advocate, approve or support the use of subversive tactics, force or violence, radicalism or disruption, revolutionary or similar means designed or used to overthrow, destroy, nullify or otherwise render ineffectual the established order of the Government or this organization shall forthwith be expelled from membership or otherwise disciplined as the circumstances may require, which action may be taken and penalty imposed by either the Local union of which the guilty party is a member or by the General President.

Charges by General Officers

Art. XVI. Section 5. Any General Officer may file charges in any Local Union against any member thereof.

Good Standing Required of Officers

Art. XVI. Section 6. No person shall become or remain President, Vice President, Secretary-Treasurer, Business Agent or other officer or representative of any Local Union unless he is a member thereof in good standing. In the event such person shall cease to be a member in good standing or holds a withdrawal card, he shall be disqualified from further serving in such official capacity and the exercise by him of all rights, powers, privileges, authority and duties connected with his office shall automatically be revoked and cease.

ARTICLE XVII

APPEALS

Appeals to General Executive Board

Art. XVII. Section 1(a). Any General Officer who shall have filed in a Local Union charges against a member thereof, and any officer or member of a Local Union, may appeal to the General Executive Board from the adoption of any action by said Local Union, or from any decision rendered by the General President. Any Local Union or member thereof which belongs to a local, State or Provincial Organization or Joint Executive Board may appeal to the General Executive Board from any act or decision of said local, State or Provincial Organization or Joint Executive Board. Notice of such appeal must be

in writing and filed with the General Secretary-Treasurer within thirty (30) days from the date of the adoption of said action or the rendition of said decision by the General President.

Requests to modify, continue, amend, withdraw or invoke International Supervision, together with official actions or inaction thereon shall constitute appealable matters and be processed in the manner and form regulating appeals under the Constitution. Any such request when signed by not less than 25 per cent of the members in good standing of a Local Union shall cause a referendum on the subject to be submitted to the membership by the General President, who shall be guided by the results thereof in his decision on the question involved therein.

Art. XVII. Section 1(b). The party making such appeal must file with the notice of appeal a written statement covering the decision of the General President complained of, together with sufficient facts to permit the General Executive Board's consideration of the same, or a complete statement of the evidence, exhibits and decision in the case of an appeal from the act of a Local Union or subdivision herein referred to and at the same time file a copy of said evidence, exhibits and decision with the said Local Union or subdivision affected. The General Secretary-Treasurer shall thereupon notify the party against whom the appeal is taken, which party shall be allowed thirty (30) days from such notice within which to file answer or defense. When both parties have properly filed the matters hereinbefore required, or upon the expiration of the period allowed for such filing, the General Executive Board shall proceed to hear the appeal, either upon the record or upon retrial, or both, and render its decision thereon.

Art. XVII. Section 1(c). All interpretations and decisions by the General Executive Board involving the organic law of the International Union of Operating Engineers shall be subject to review only by the General Convention, and all findings of facts by the General Executive Board shall be final, conclusive and binding.

Appeals to General Convention

Art. XVII. Section 2. Any subdivision within the International Union of Operating Engineers and any officer or member thereof and any General Officer may appeal from the decision of the General Executive Board to the General Convention. Notice of such appeal, together with a complete statement of the record, findings and exhibits in the case must be filed within thirty (30) days from the rendition of a decision by the General Executive Board by delivery of said documents and notice of appeal to the General Secretary-Treasurer.

All Court Actions Superseded

Art. XVII. Section 3. No suit or other action at law or equity shall be brought in any court by any member, officer or subdivision of the International Union of Operating Engineers until and unless all rights, remedies and provisions for hearing, trial and appeal within the Organization shall have been properly followed and exhausted by the member, officer or subdivision complaining. Any member violating this provision, shall, in addition to the penalties prescribed in the Constitution and ritual, be automatically fined the full amount of the costs incurred in the defense of any such action by the Union, together with such costs additional as the court may fix or assess against said member.

ARTICLE XVIII

METHODS OF AMENDING AND REVISING CONSTITUTION AND INVOKING INITIATIVE, REFERENDUM AND RECALL

Amending Constitution at General Convention

Art. XVIII. Section 1. The Constitution may be amended or revised at a General Convention provided the proposal to amend or revise be made in writing and be filed with the General Secretary-Treasurer not less than seventy-five (75) days prior to the date of the calling of said Convention. Such proposal to amend or revise the Constitution shall emanate from a Local Union in good standing or a General Officer of the Organization and must bear the seal of the Local Union or General Officer proposing the same. The General Secretary-Treasurer shall submit all such proposals properly filed with him to the General Executive Board and to all Local Unions in good standing not less than thirty (30) days prior to the date of the General Convention.

Amending Constitution and Conducting Referendums in the Interim Between General Conventions

Art. XVIII. Section 2. There is hereby reserved to all Local Unions in good standing the power to initiate proposals to amend or revise the Constitution and also the power to approve or reject any act, measure, resolution, by-law, rule or constitutional amendment enacted by the General Convention or promulgated by any General Officer, provided that there be filed with the General Secretary-Treasurer written copy or copies

of such proposals bearing the signatures, consents and seals of not less than twenty-five (25) per cent of all Local Unions in good standing, and provided further that any proposal to approve or reject shall be filed with the General Secretary-Treasurer not later than sixty (60) days after the date of the passage of said matters by the General Convention or the promulgation thereof by any General Officer. No proposition under this section shall be declared adopted unless a majority of the membership in good standing vote in favor thereof. When such requirements are fulfilled and the proposal properly filed with the General Secretary-Treasurer, he shall cause the same to be published in the next issue of the Journal, and provide for the taking of a vote thereon in the manner and form hereinafter set forth.

Initiative and Recall

Art. XVIII. Section 3. Whenever forty (40) per cent of all Local Unions in good standing and representing at least forty (40) per cent of the entire membership of the International Union in good standing, by a majority vote of the entire membership of each, shall file with the General Secretary-Treasurer a petition requesting the recall from Office of any General Officer, the General Secretary-Treasurer shall thereupon submit the same to the membership and a vote shall be taken thereon. Upon receipt of such petition the General Secretary-Treasurer shall set the time within which the Local Unions shall vote. No recall petition shall prevail unless there shall be cast thereon the votes of not less than fifty-five (55) per cent of the entire membership of the International Union in good standing and a majority vote of the entire membership in good standing cast in favor thereof.

Method of Voting

Art. XVIII. Section 4. The voting upon any proposition arising under this Article shall be conducted by the General Secretary-Treasurer upon tally sheets and ballots transmitted by the General Secretary-Treasurer to the Local Unions. A vote shall be taken by the Local Unions at a regular meeting. Ballots shall be transmitted by the Local Unions to all members in good standing and entitled to vote. The General Executive Board shall appoint three (3) tellers and employ a Certified Public Accountant, all of whom shall receive, check, certify to and announce the result of the tally sheets, ballots and voting conducted by the Local Unions and transmitted to them. After the vote shall have been taken by the Local Unions in the manner herein prescribed, the report of said vote upon the tally sheets shall be transmitted by the Local Unions to the tellers and a Certified Public Accountant appointed by the General Executive Board and the tellers and Certified Public Accountant shall report the result of said vote to the General Secretary-Treasurer, who shall cause it to be published in the next issue of the Journal.

ARTICLE XIX

DEFENSE FUND, LOCKOUTS AND STRIKES

Defense Fund

Art. XIX. Section 1. There shall be a Defense Fund which shall be drawn upon for the purpose of defending the International Union and its members in efforts to prevent lockouts and strikes, by assisting in sustaining the members in cases

of lockouts and authorized strikes, in protecting and defending the International Union and its members in any legal proceedings brought against it or its members, to employ counsel, and for any other purpose which the General President, subject to the approval of the General Executive Board, shall deem necessary for the further protection of the International Union and its members.

Lockouts and Strikes

Art. XIX. Section 2. When a strike has been authorized by the General President and a lockout has been reported to and investigated by the General President, he shall instruct the General Secretary-Treasurer to remit to the Financial Secretary of the Local Union or Unions involved in such lockouts and strikes sufficient monies as in the opinion of the General President may be necessary for the purpose of assisting in sustaining such Local Unions during the pendency of the lockout or strike.

Strike Benefits

Art. XIX. Section 3. No financial assistance shall be given to any Local Union or Unions until a period of one week has elapsed from the time a lockout or strike began; but thereafter it shall continue for such period of time as in the judgment of the General President may be necessary. Those members entitled to strike benefits shall be reported to the General President by the Financial Secretary of the Local Union or Unions involved in such lockouts or strikes on forms provided for such purpose by the General Secretary-Treasurer. No strike benefits shall be paid to any member

who is not actually a striker or a victim of a lockout, and such benefit shall cease when the member involved secures employment.

ARTICLE XX

DEATH BENEFITS

Art. XX. Section 1. For the purpose of maintaining a Death Benefit Fund, twenty-five (25) cents of the per capita tax paid the International Union each month shall be deposited in a Death Benefit Fund and is to be used for no other purpose than for the payment of death benefits and the expenses necessary to operate said fund. All death benefits, or claims, shall be paid from the Death Benefit Fund in conformity with the provisions of this Article only, and no other funds or property of the International Union shall be liable for the payment thereof, nor shall the International Union be liable beyond the amount at any time available in the Death Benefit Fund.

Art. XX. Section 2. Death benefits shall be paid to beneficiaries of members in continuous good standing under the provisions of this section as follows, and not otherwise:

Class I. Beneficiaries of members in good standing for a period of one (1) year to five (5) years shall receive Seventy-five ($75.00) Dollars.

Class II. Beneficiaries of members in good standing from five (5) years to ten (10) years shall receive One Hundred Seventy-five ($175.00) Dollars.

Class III. Beneficiaries of members in good standing from ten (10) years to fifteen (15) years shall receive Three Hundred Fifty ($350.00) Dollars.

Class IV. Beneficiaries of members in good standing from fifteen (15) years to twenty (20) years shall receive Four Hundred ($400.00) Dollars.

Class V. Beneficiaries of members in good standing twenty (20) years or more shall receive Five Hundred ($500.00) Dollars.

Art. XX. Section 3. For the purpose of establishing and maintaining a right to benefits under this Article, a member in good standing is a member who is not suspended by the operation of any section of this Article or of any other Article of this Constitution, and who also has paid his dues and all other obligations to the date of his death.

Art. XX. Section 4. The beneficiaries of members who transfer from one Local Union to another, and who remain in continuous good standing, shall receive benefits the same as though the member had continuously remained a member of the same Local Union.

Art. XX. Section 5. Any member who is suspended or expelled from a Local Union or by the General Executive Board, for any reason whatsoever, and later becomes reinstated, must be a member in good standing for one year after his reinstatement before his beneficiaries are entitled to death benefits, and then his beneficiaries shall be entitled to the amount only in his class according to the length of time that he is a member in good standing after such reinstatement.

Art. XX. Section 6. The beneficiaries of any member who becomes suspended or expelled by his Local Union or the General Executive Board, for any cause whatsoever, lose their right to death benefits unless said member has complied with Section 5 of this Article.

Art. XX. Section 7. The Financial Secretary of each Local Union shall keep the General Secretary-Treasurer advised in his monthly report to the General Office of all additions to their membership, and all deductions, and such additional members shall be entitled to benefits as mentioned in this Article.

Art. XX. Section 8. The members of any Local Union two months in arrears with its per capita tax to the International Union shall be suspended from all benefits accrued in the Death Benefit Fund under this Article, until such times as the Local Union pays its arrearages of per capita tax, and has complied with all other obligations provided in the Constitution, and has been reinstated; and from the date of reinstatement the members of such Local Union shall be entitled to again begin to accrue benefits, and in case of death of any such member occurring not less than one year after such reinstatement, his beneficiaries shall be entitled to the payment of benefits designated according to the class that the deceased member had established at the time of his death and from the date of such reinstatement of his Local Union.

A member of a Local Union which has withdrawn, lapsed, dissolved, been suspended or expelled, or whose charter has been revoked, if such member is in good standing in his Local Union on the date of such withdrawal, lapse, dissolution, suspension, expulsion or revocation of charter, shall not forfeit or waive any of his accrued benefits earned in such Local Union, but such accrued benefits shall be continuous with that earned after transfer to another Local Union; **Provided**, such member shall within thirty days cause to be invoked and have made use of the privilege accorded such member to transfer to another Local Union

in accordance with Article XV of this Constitution.

Who Shall Be Beneficiaries

Art. XX. Section 9. The beneficiaries shall be paid according to the table which follows unless otherwise specified by insured member:—

1st. If there is a widow and a child or children surviving, the widow shall receive all of said benefit.

2nd. If there is a child surviving and no widow, then said child shall receive said death benefit.

3rd. If there are children surviving and no widow, then said children shall receive said death benefit, share and share alike.

4th. If there is no widow, child or children surviving, then said death benefit shall be paid to the parents, brothers and sisters of such member, share and share alike.

5th. In the event that there is no surviving widow, child or children, parents, brothers or sisters, of said member, then said money shall be paid to the collateral heirs.

Art. XX. Section 10. All claims shall be made for said death benefit within a period of sixty days from the date of death. The beneficiary shall present within the sixty-day period to the Secretary of the Local Union a death certificate signed by the proper authority authorized to issue death certificates, if there be one, together with an affidavit of the claimant showing the relationship of the deceased to the beneficiary and stating who is entitled to said payment and identifying the person named in accompanying death certificate as the same person named in said death certificate.

The Financial Secretary of said Local Union shall thereupon promptly forward said documents to the General Secretary-Treasurer. The General Secretary-Treasurer shall then check up said claim with the list of members in good standing as otherwise herein provided, and shall remit within a reasonable time, upon reasonable proof of death, to the beneficiary, through the Local Union of which he was a member, the amount of the benefit due said beneficiary.

Art. XX. Section 11 Immediately upon the death of a member, the Financial Secretary of the Local Union shall notify the General Secretary-Treasurer by mail, and on the established form of certificate of death furnished by him, giving the name, address, register number, the date of the last payment of dues to the Local Union and the month paid for by the deceased, his age, date of death and date of initiation, and any other information required, including the name or names, addresses and relationship of his beneficiaries, all to be properly certified to by the President and Financial Secretary of the Local Union with its seal affixed.

Art. XX. Section 12. No suit shall be brought against a Local Union or member and no Local Union or member thereof shall be liable for the death benefit herein provided for. The General Secretary-Treasurer shall have the authority to investigate the legality of any claim, and the President and Financial Secretary of any Local Union out of which a disputed claim originates shall, upon demand by the General Secretary-Treasurer, furnish a sworn statement concerning said claim.

Any Financial Secretary of any Local Union altering the dues book of any member or delib-

erately reporting him suspended when he should not have been, or fraudulently recording any payment of dues for a deceased member after his death, shall be expelled and forever barred from membership in the International Union, and the Local Union shall be fined the amount due the beneficiary of such deceased member, subject only to the right of appeal to the General Executive Board and from their decision to the Convention of the International Union.

Art. XX. Section 13. The General Secretary-Treasurer shall cause to be published in each issue of the Journal the names and register numbers and Local Union of those who have died, the cause of death of the member, and the amount paid and to whom paid.

After this plan is adopted, it is understood that members who allow themselves to become suspended or expelled from the International Union lose all rights whatsoever that they may enjoy under this plan.

Art. XX. Section 14. The provisions of this Article shall prevail over any other Article of this Constitution which may conflict with this Article.

In the event it becomes expedient for the General Executive Board to amend the rules governing the operation of this Article, they shall do so, as may to them seem necessary, and the changes shall be binding upon the members.

All of the provisions of this Article are to be construed together.

ARTICLE XXI

JOINT EXECUTIVE BOARDS

Formation

Art. XXI. Section 1. A Joint Executive Board may be formed in any city or town where two or more Local Unions exist. Such boards shall be composed of three delegates from each Local Union, elected by the Local Unions at the regular election of officers, and shall hold office for not less than one nor more than four years or until their successors, as determined by the Local Union, shall be elected and qualified.

Officers

Art. XXI. Section 2. The officers of Joint Executive Boards shall consist of a Chairman, Vice Chairman, and Secretary-Treasurer, each of whom shall be elected by said board, and shall hold office for one year, or until their successors are elected and qualified.

Quorum

Art. XXI. Section 3. A quorum for the transaction of business before a Joint Executive Board shall consist of a majority of the members thereof.

Powers

Art. XXI. Section 4. A Local Joint Executive Board shall have power to adjudicate grievances arising between Local Unions within its jurisdiction; to summon and examine any member of any such Local Unions; to adopt By-Laws and trade rules, with the consent of the General President, and not in conflict with this Constitution and ap-

proved by a majority vote of all Local Unions affiliated with the said board.

Minutes

Art. XXI. Section 5. Copies of all minutes and proceedings of any meeting of the Joint Executive Board shall immediately thereafter be sent to the General President by the Secretary-Treasurer of the Joint Executive Board.

ARTICLE XXII

STATE AND PROVINCIAL ORGANIZATIONS

Formation

Art. XXII. Section 1. State and Provincial Organizations may, with the consent of the General President, be formed in any State or Province having three or more Local Unions, provided that the organizer thereof has notified all Local Unions in said State or Province at least thirty days prior to the filing of a petition therefor with the General Secretary-Treasurer.

Officers

Art. XXII. Section 2. The officers of a State or Provincial Organization shall consist of a President, Vice President, Secretary-Treasurer, and three Trustees. Their term of office shall begin at the convention of the State or Provincial Organization to which they shall have been elected and continue for one year, or until their successors are elected and qualified. Not more than two of the officers described herein shall hold

membership in any one Local Union affiliated with a State or Provincial Organization.

Executive Boards

Art. XXII. Section 3. State and Provincial Organizations may provide for the creation of a State or Provincial Executive Board consisting of the President, Vice President, Secretary-Treasurer, and the three Trustees. All the powers of State or Provincial Organizations when in session shall, when the same is not in session, pass to and vest in the State or Provincial Executive Board.

Voting

Art. XXII. Section 4. Local Unions belonging to State or Provincial Organizations shall be entitled to one delegate for each one hundred members or less, together with one delegate or one vote for each succeeding one hundred members or majority fraction thereof. No delegate shall be permitted to represent more than one Local Union, nor shall he vote for more than three hundred members. The election of delegates and alternates to the convention of a State or Provincial Organization shall be held at the regular election of the officers of the Local Union held prior to the Convention.

Powers

Art. XXII. Section 5. State and Provincial Organizations shall have power to adopt, with the consent of the General President and not in contravention of this Constitution, such laws as will assist them in organizing, protecting, and strengthening the Local Unions belonging thereto, and their officers shall be held responsible for compliance with all requirements of the Constitution, Obligation, and Ritual of the International Union.

Meetings

Art. XXII. Section 6. State and Provincial Organizations shall meet in general convention annually upon a date set by the preceding convention or by the State or Provincial Executive Board or, in the event a date has not been so fixed, by a vote by the majority of the Local Unions affiliated with said State or Provincial Organization.

Minutes

Art. XXII. Section 7. Copies of the minutes of each General Convention and of each meeting of the State or Provincial Executive Board shall be transmitted to the General President by the Secretary-Treasurer of the State or Provincial Organization immediately following the holding of any meeting thereof.

ARTICLE XXIII

GOVERNMENT OF LOCAL UNIONS

The laws, rules and procedure by which Local Unions shall conduct their affairs shall be as follows:

ART. XXIII—SUBDIVISION 1

OFFICERS

Titles

Art. XXIII. Subdiv. 1. Section (a). The officers of the Local Union shall be the President, Vice President, Recording-Corresponding Secretary, Financial Secretary, Treasurer, three Trustees, three Auditors, Conductor, Guard, and such delegates and committees as may be elected. In addition to the election of its constitutional officers, a Local Union may, by its by-laws, define the status of any of its business managers, business representatives, agents, and similar classifi-

cations to be by either election, appointment or hiring as it may deem advisable. The offices of Financial Secretary and Treasurer shall not be held by the same person.

Terms

Art. XXIII. Subdiv. 1. Section (b). The terms of all officers, excepting those of the Trustees and Auditors, shall be for one year or until their successors are elected, unless, however, the Local Union shall by proper action increase the term; but in no event shall any officer be elected for a greater period than four (4) years. The terms of the Trustees and Auditors shall be for three (3) years each and said terms shall be staggered so that the office of only one Trustee and one Auditor shall be for election in any one year. No member shall be eligible for election, be elected nor hold office unless he shall have been continuously in good standing in the Local Union electing him for not less than one year, nor unless he shall have filed a declaration of candidacy accompanied by an anti-Communist affidavit with the Recording-Corresponding Secretary of the Local Union for the office to which he seeks election on or before the fifteenth day of January preceding the election, nor unless he shall have been in regular attendance at a majority of the regular meetings intervening between the date of the filing of such declaration of candidacy and the date of the election; the Recording-Corresponding Secretary shall read said declaration of candidacy at the next two regular meetings after the filing thereof. Any Local Union which has not been in existence for a period of one year may elect officers for the period between the date of its organization and the next annual meeting, from among its members in good standing.

Executive Board

Art. XXIII. Subdiv. 1. Section (c). Local Unions may by their by-laws establish executive boards and in such event the same shall be composed of the President, Vice President, Recording-Corresponding Secretary, Financial Secretary and Treasurer, together with such business agents, representatives or managers as the by-laws may provide, and other members of the Local Union may be elected thereto by the Local Union and appointed by the President.

Powers of the Executive Board

Art. XXIII. Subdiv. 1. Section (d). The Executive Board shall be the policy-making and administrative tribunal of the Local Union. It shall have such powers as may from time to time be delegated to it by action of the Local Union, or conferred by the Constitution. All acts of the Executive Board shall be reviewable by the Local Union but shall be maintained in full force and effect, subject only to revocation by action of the membership of the Local Union if taken at the next subsequent membership meeting following the adoption of the act in question.

Election of Officers

Art. XXIII. Subdiv. 1. Section (e). The election of officers of a Local Union shall be held at the last regular meeting in June and the nominations shall be made at the regular meeting prior to the election. The installation of newly elected officers shall take place at the first regular meeting in July. The Local Union may adopt the Australian ballot system, in which event the polls shall be kept open between the hours of

8 A. M. and 10 P. M. on the date of election, or may hold the election through referendum conducted by mail.

Vacancies in Office and Removal of Officers

Art. XXIII. Subdiv. 1. Section (f). A vacancy in any office shall be filled by appointment for the unexpired term thereof upon vote of a majority of the following officers, viz: President, Vice President, Recording-Corresponding Secretary, Financial Secretary and Treasurer. In the event the said officers shall fail to fill said vacancy within thirty (30) days after the same shall occur, then said position shall be filled by vote of the majority of the membership in good standing present at the next regular meeting of the Local Union following the expiration of the said thirty (30) days. The office of any officer who shall fail to discharge the duties of his office for four (4) successive meetings may be declared vacant by a majority vote of the membership in good standing. Any officer or representative of a Local Union may be removed after due trial for causes provided in this Article upon an affirmative vote of three-fourths of the membership in good standing in the same manner and form provided in the trial of members in this Article.

ART. XXIII—SUBDIVISION 2

POWERS AND DUTIES OF OFFICERS

President

Art. XXIII. Subdiv. 2. Section (a). It shall be the duty of the President to preside at all meetings, enforce the Constitution, Laws, Rules, Ritual and customs of the organization; to decide all questions of order subject to an appeal to the

Local Union; to cast the deciding vote in case of a tie; to sign all orders on the Treasurer for the disposition of funds authorized by the Local Union; to read all receipts from the General Secretary-Treasurer for funds sent to the General Office; to appoint all committees unless otherwise provided for; to be custodian of the quarterly password and examine the credentials of any member before bestowing the same; to furnish the General President full and complete information on any subject within his control or knowledge when requested; and to perform such other duties as appertain to his office or which may from time to time be delegated to him by action of the Local Union or other authorities in the organization.

Vice President

Art. XXIII. Subdiv. 2. Section (b). The Vice President shall assist the President in the discharge of his office, fill his place in his absence and have such other duties as are customarily incident to his office.

Recording-Corresponding Secretary

Art. XXIII. Subdiv. 2. Section (c). It shall be the duty of the Recording - Corresponding Secretary to keep the minutes of each meeting; to read all correspondence and documents; to issue notices for the calling of meetings; to sign all orders on the Treasurer for the disposition of funds authorized by the Local Union; to notify the General Secretary-Treasurer of all newly elected officers; to keep a record of all applications for membership; to have charge of the seal and affix the same to all official documents;

to maintain a correct list of the membership and their addresses; to include a copy of the Financial Secretary's monthly report to the General Secretary-Treasurer in the minutes; to furnish the General President full and complete information on any subject within his control or knowledge when requested, and such other duties as are customarily incident to his office or which may from time to time be delegated to him by the Local Union or others in authority. The Recording-Corresponding Secretary shall within fifteen (15) days after the election of delegates and alternates to a General Convention report to the General Secretary-Treasurer the names and addresses thereof, and upon failure so to do he shall be subjected to a fine of Five ($5.00) Dollars. Upon failure of the Recording-Corresponding Secretary to include in the minutes a copy of the Financial Secretary's monthly report to the General Secretary-Treasurer he shall be subjected to a fine of Five ($5.00) Dollars in each instance. In the absence of both the President and Vice President from a meeting the Recording-Corresponding Secretary shall call the same to order and a President pro tem shall be elected who shall serve as presiding officer for said meeting.

Financial Secretary

Art. XXIII. Subdiv. 2. Section (d). It shall be the duty of the Financial Secretary to receive all monies and all funds paid to the Local Union; to pay all funds received by him to the Treasurer upon receiving Treasurer's receipt therefor; to keep a correct financial account of each member together with the name and address of each; to announce before the adjournment of each meeting the amount of funds collected thereat by him; to

report at the end of each month to the Local Union the number of members in good standing; to make a monthly written report to the General Secretary-Treasurer of all admissions, rejections, deaths, resignations, expulsions and suspensions, keep a record thereof and furnish the Recording-Corresponding Secretary a copy thereof; to keep a record of the dues stamps received and disbursed. He shall give bond in such amount and with such company as the Local Union may determine for the faithful performance of the duties of his office and to secure all funds in his possession due to the Local Union or the General Office, the expense of said bond to be paid by the Local Union. He shall furnish the General President full and complete information on any subject within his control or knowledge when requested and perform such other duties as are customarily incident to his office or which from time to time may be delegated to him by the Local Union or other authorities.

Treasurer

Art. XXIII. Subdiv. 2. Section (e). It shall be the duty of the Treasurer to receive and hold all funds collected by the Financial Secretary and delivered to him; to give receipt for monies delivered to him; to make no disbursements without approval of the Local Union and only upon written order of the President and Recording-Corresponding Secretary; to make an itemized statement and report to the Local Union at the end of each quarter on the condition of his accounts and the transactions of his office; to submit his books and accounts for inspection by the Trustees when called upon by them; to furnish the General President full and complete information on any subject within his control or knowl-

edge when requested and to perform such other duties as are customarily incident to his office or which from time to time may be delegated to him by the Local Union or other authorities.

Conductor

Art. XXIII. Subdiv. 2. Section (f). It shall be the duty of the Conductor to examine all present at meetings; to ascertain that the dues book of each is paid up to date; to receive the quarterly current password; to report to the President all who are without the password; to conduct all candidates through the initiatory ceremony, and see that the Ritual is properly administered; to see that all candidates comply with the Ritual; to see that no one remains at the meeting or initiation save such as are members in good standing and who know the password; to furnish the General President full and complete information on any subject within his control or knowledge when requested and perform such other duties as are customarily incident to his office or which may from time to time be delegated to him by the Local Union or other authorities.

Guard

Art. XXIII. Subdiv. 2. Section (g). It shall be the duty of the Guard to take charge of the doors at meetings to see that none but members in good standing and with the quarterly password enter; to allow no member to retire without the consent of the President; to announce the names of all those without the password desiring admission and to admit such as the President shall designate; to furnish the General President full and complete information on any subject

within his control or knowledge when requested and to perform such other duties as are customarily incident to his office or which from time to time may be delegated to him by the Local Union or other authorities.

Trustees

Art. XXIII. Subdiv. 2. Section (h). It shall be the duty of the Trustees to have supervision over all funds and property of the Local Union under such instructions as they shall from time to time receive from the Local Union; to see that the funds of the Local Union are deposited by the proper officers in such banks and accounts therein as the Local Union shall designate; to examine the bank books and records of the Treasurer and any other officer holding funds of the Local Union and see that the same are correct; to be custodians of the bonds covering the Financial Secretary and Treasurer and such other officers as the Local Union may require to be bonded; to furnish the General President full and complete information on any subject within his control or knowledge when requested. They shall have such other duties as are customarily incident to their office or which shall from time to time be delegated to them by other authorities.

Auditors

Art. XXIII. Subdiv. 2. Section (i). It shall be the duty of the Auditors to audit the books and accounts of the Recording-Corresponding Secretary, Financial Secretary, Treasurer, and any other officer or representative holding funds of the Local Union, at the end of the official quarter

each year; and to report thereon at the first meeting of the Local Union in the months of January, April, July and October. The Auditors shall have power to summon any officer or member to explain the condition of his records or any discrepancy that may appear therein and any officer so summoned shall be required to turn over to the Auditors all papers, records, books and property belonging to the Local Union demanded by them. They shall furnish the General President full and complete data on any subject within their control or knowledge when requested.

ART. XXIII—SUBDIVISION 3

DUTIES OF MEMBERS

Art. XXIII. Subdiv. 3. Section (a). Members of Local Unions shall conform to and abide by the Constitution, Laws, Rules, Obligation and Ritual, and the decisions, rulings, orders and directions of any authority of the International Union empowered by this Constitution to make them. Each member shall keep the Recording-Corresponding Secretary properly and promptly notified of his residence and any change thereof. Each member shall hire none but those in good standing with a Union having jurisdiction over the work to be done nor purchase commodities without the union label thereon when otherwise possible. Members may upon proper credentials being produced obtain admission to meetings of other Local Unions of the organization.

Art. XXIII. Subdiv. 3. Section (b). The admission to membership in conformity to the Constitution, Obligation and Ritual constitute a contract between the member, his Local Union, the

International Union and every other member therein, whereby, in consideration of the benefits bestowed by such membership, he agrees that he will remain a member until expelled; that he will not violate the Constitution. Laws, Rules. Obligation and Ritual, and the decisions, rulings, orders and directions of the International Union or its subordinate branches, nor the trade rules of the locality in which he works; that he will not enter into the employment of any person conditioned on severing his membership with this organization; that upon the termination of his membership he will acknowledge his Obligation to be still binding upon him and refrain from doing any act or deed in violation of the principles, Constitution, Laws, Obligation, Ritual and policies of this Organization, and the decisions, rulings, orders and directions of any authority of the International Union empowered by this Constitution to make them.

Art. XXIII. Subdiv. 3. Section (c). All business transactions and affairs of the International Union, its subordinate subdivisions and officers within the knowledge of any member shall be held, inviolate and private, from persons outside the organization.

ART. XXIII—SUBDIVISION 4

LOCAL OFFICE

Art. XXIII. Subdiv. 4. Section (a). Local Unions may establish and maintain a local office or headquarters and employ any of their elected officers or such business representatives and clerks as may be deemed necessary in the management thereof and may prescribe the delega-

tion of duties of the several duly elected officers to such business representatives and clerks, together with such other duties as from time to time may be deemed advisable; provided, however, that no one person shall perform the duties of both Financial Secretary and Treasurer.

Art. XXIII. Subdiv. 4. Section (b). No contract for the employment of any officer, business representative, business agent, or similar position, whether in writing, by resolution or otherwise, shall be valid until and unless the same is submitted to the General President and his approval thereof made in writing.

Art. XXIII. Subdiv. 4. Section (c). Any and all diversion of funds from a Local Union to or for the personal benefit of individual members by way of gifts, additional compensation for benefits or services otherwise paid for, retroactive compensation for services not previously authorized and similar situations shall be illegal and void unless prior to the payment thereof specific approval in writing shall have been secured from the General President.

ART. XXIII—SUBDIVISION 5

COMMITTEES

A Local Union may establish such committees as it may desire and delegate specific duties to them. All committees shall render reports promptly to the Local Union and deliver all funds collected or held by them to the Financial Secretary, and perform such other acts and in such manner as the Local Union may from time to time direct.

ART. XXIII—SUBDIVISION 6

PROCEDURE ON APPLICATIONS

Applications for membership shall be referred to a committee, which may consist of the Local Executive Board in the Local Union, which committee shall investigate the character and qualifications of the applicants and report not later than the next meeting. A written or ball-ballot vote shall be taken. A majority of the ballots cast shall be required to elect an applicant. The applicant, if elected, shall be notified to appear for initiation and upon failure to appear at the next regular meeting thereafter his application fee shall be forfeited unless an extension be granted. Upon his initiation, his name and address shall be placed on the records and he shall be furnished a copy of the Constitution and his book of membership. If an applicant is rejected his initiation fee shall be returned to him. A rejected applicant may re-apply for membership after a lapse of ninety days following his rejection.

ART. XXIII—SUBDIVISION 7

DUES, REMITTANCES, ARREARAGES, CHARGES, REINSTATEMENT AND TRIALS

How Dues Fixed

Art. XXIII. Subdiv. 7. Section (a).

The dues required to be paid by the members to their Local Union shall be fixed by a majority vote of the members thereof but shall not be less than the minimum dues provided under the Constitution.

Fixing Current Due Dates

Art. XXIII. Subdiv. 7. Section (b). Such dues may be fixed and charged on a monthly, quarterly, semi-annual or yearly basis and shall become due and payable on the first day of the terms so fixed. Dues for any one of such terms shall be known as current dues for that term.

Good Standing Defined with Relation to Dues

Art. XXIII. Subdiv. 7. Section (c). No member shall be in good standing unless he shall have affixed to his dues book stamps showing payment for all current dues and receipts for other indebtedness to his Local Union.

Penalties for Members in Arrears to Local Union

Art. XXIII. Subdiv. 7. Section (d). Members thirty (30) days in arrears in payment of current dues, assessments or fines may upon vote of the Local Union be denied voice and vote therein.

"Members sixty (60) days in arrears in payment of dues, assessments or fines may upon vote of the Local Union be barred from meetings or removed from committees or both, or suspended from membership.

"Members ninety (90) days in arrears in payment of dues, assessments or fines may upon vote of the Local Union be penalized by one or more of the following: removed from employment where agreements between the Local Union and employers permit, removed from office without trial."

Members six (6) months in arrears in payment

of dues, assessments or fines may, upon report thereof by the Financial Secretary at a regular meeting of a Local Union, be expelled by a majority vote of the members present.

The local executive board is likewise authorized and empowered to take the same action provided hereinabove and to enforce the foregoing penalties for arrearages against members, whenever, upon findings by it said arrearages are found to exist, and the same authority and power is conferred upon Supervisors in charge of Local Unions under International Supervision.

No member of any Local Union shall seek to affiliate with another Local Union save in the manner and form required by the Constitution. Such member shall be required to make full disclosure to such other Local Union of his previous memberships including all facts as to any fine, penalty or other disability imposed within the organization and existing and unsatisfied against him and in addition such member shall strictly conform to and discharge any and all constitutional requirements governing the lifting of the said fine, penalty or disability.

In addition to the penalties hereinabove provided, Local Unions may also impose the penalties provided for the causes herein set forth.

Other Causes for Fines, Suspensions or Expulsion

Art. XXIII.
Subdiv. 7.
Section (e).

Any officer or member of a Local Union who becomes an habitual drunkard; who wrongs a fellow member or defrauds him; who commits an offense discreditable to the International Union or its subdivisions; who creates dissension among the

members; who destroys the interest and harmony of the Local Union; who seeks to dissolve any Local Union or separate it from the general organization; who wilfully slanders or libels an officer or member of the Organization; who violates the trade rules of the locality in which he is working; who fraudulently receives, misapplies, converts or embezzles the funds of any subdivision of the International Union or the monies of any member entrusted to him; who violates his obligation or any section of the Constitution, Rules, Edicts and Ritual of the International Union; who divulges the password to anyone except the officer authorized to receive the same; who is guilty of insubordination; or who refuses to acknowledge or perform the lawful command of those authorized within the International Union to issue the same, may be disciplined or, upon trial therefor and conviction thereof, be fined, suspended or expelled from his Local Union.

Any member working contrary to a declared strike or the rules established by the Local Union by reason of a lockout shall upon trial and conviction thereof be subject to a fine of not less than Twenty-five ($25.00) Dollars, or expulsion, or both. His name shall be reported to his Local Union, which shall enforce this section, charge and collect the fine so imposed, under penalty of expulsion. Local Unions shall have the power to fix such other offenses as from time to time may be determined by them.

Fines and Assessments Must Be Paid Before Dues Accepted

Art. XXIII. Subdiv. 7. Section (f). All fines or assessments legally levied or imposed shall be charged by the Financial Secretary against the member from whom due and must be paid by

the member involved to the Financial Secretary within thirty (30) days and before any dues owing by him to the Local Union can be received or accepted by the said Local Union.

Where Other Local Unions Are Involved

Art. XXIII. Subdiv. 7. Section (g). Any fines levied by any Local Union on a member of another Local Union shall be reported to and entered upon the books of the Local Union to which he belongs which shall charge the same to and collect from the member involved. Upon collection of the same such Local Union shall forward the money to the Local Union which levied the same. Failure to transmit such fine as provided shall provide grounds for suspension of the charter of the Local Union charged with such duty.

Reinstatement of Suspended Members

Art. XXIII. Subdiv. 7. Section (h). A member who has been suspended under the provisions of this subdivision may be restored to membership in good standing and to his membership number only by making application on the form furnished by the General Secretary-Treasurer, together with the payment of all dues, assessments and fines then in arrears, the reinstatement assessment and in addition an amount equal to three months' dues. When all the foregoing requirements have been fulfilled by the applicant, notice thereof shall be given by the Financial Secretary to the General Secretary-Treasurer on the next monthly report, accompanied by all documents, reinstatement assessment and other charges due thereon.

Reinstatement of Expelled Members

Art. XXIII. Subdiv. 7. Section (i). A member who has been expelled for any of the causes provided in this Article may be restored to membership in good standing and to his membership number only by application therefor on the form furnished by the General Secretary-Treasurer, together with the payment of all dues, assessments and fines in arrears, the reinstatement assessment and, in addition, an amount equal to six months' dues. When all the foregoing requirements have been fulfilled and the approval of the General President has been endorsed on said application for reinstatement, and the Local Union by vote shall have granted said application, notice thereof shall be given by the Financial Secretary to the General Secretary-Treasurer on the next monthly report, accompanied by all documents, reinstatement assessment and other charges due thereon. The affiliation with a Local Union of any person previously expelled from any Local Union of the International Union of Operating Engineers and not reinstated as hereinabove provided shall be null and void and, upon discovery of the fact by the General Executive Board or the General Officers, shall be cancelled upon the records of the International Union of Operating Engineers and the Local Union with which such person has become affiliated shall immediately strike his name from its records.

Local Unions Charged Upon Reported Status of Members

Art. XXIII. Subdiv. 7. Section (j). The General Secretary-Treasurer shall charge to the Local Unions and the Local Unions must pay all per capita taxes and assessments due from the

Local Union to the General Office upon the status of members reported by the Local Union to the General Secretary-Treasurer, which per capita taxes and assessments shall continue to be charged to and collected by the General Secretary-Treasurer from the said Local Union until a change in the status of any member shall be reported to and filed with the General Secretary-Treasurer.

When a Local Union Not Charged With Certain Per Capita Taxes

Art. XXIII. Subdiv. 7. Section (k). In instances where the penalty of suspension or expulsion is invoked upon members as provided in this Article, or where members have died or have properly transferred or withdrawn, Local Unions may, upon report to the General Secretary-Treasurer of each suspension, expulsion, transfer, withdrawal, or death, be relieved from further payment (including that due for the month in which the report is made but not for the month in which the death occurs or withdrawal is made) of the per capita tax due from the Local Union to the General Secretary-Treasurer on such members reported.

Trials

Art. XXIII. Subdiv. 7. Section (l). A Local Union shall have the power to discipline, fine, suspend or expel its members, upon causes provided in this Article, and provided further that any member charged with the offenses designated in this Article shall be tried within the jurisdiction of the Local Union where said offense was committed, in which case a copy of the verdict shall

be sent to the Local Union to which the member charged belongs.

Art. XXIII. Subdiv. 7. Section (m). All charges must be preferred in writing, signed by the complainant and filed with the Recording-Corresponding Secretary and read by the Recording-Corresponding Secretary at the next succeeding meeting following the filing of same. Immediately upon filing of such charges the Recording-Corresponding Secretary shall notify the defendant in writing, enclosing a copy of said charges, and of the date set for the filing of the answer or defense or the entering of a plea by the defendant, which date shall be not less than two nor more than four weeks thereafter.

Art. XXIII. Subdiv. 7. Section (n). After the pleadings are filed or the plea entered or the time elapsed within which the same must be filed or entered, the President shall cause the parties to be notified of the trial date, which must be the next regular meeting thereafter. Unless a request for postponement of the trial shall have been made to and granted by the President, the trial shall proceed upon the date set. Complainants and defendants may present their own cases or by counsel selected from among the membership of the International Union of Operating Engineers. After all the evidence is in and a full and impartial hearing has been had upon the issues, the President shall distinctly state the charge or charges and present the matter to the members present at said meeting for a vote.

Art. XXIII. Subdiv. 7. Section (o). The said members shall vote by ballot, either guilty or not guilty, on the merits of the case. Three tellers shall be appointed, one by the defendant.

one by the complainant and one by the President (if the President is either complainant or defendant then the third teller shall be elected by the meeting), which tellers shall collect the ballots and announce the verdict. A three-fourths vote of the membership recorded as present shall be required for conviction in cases involving expulsion and a majority vote in cases involving other penalties. If a verdict of guilty is returned the President shall then prescribe the penalty permitted by the vote to be imposed.

Art. XXIII. Subdiv. 7. Section (p). In the event the complainant fails to appear at the time set for trial the President may dismiss the charges unless otherwise determined by a two-thirds vote of the members present. In the event the defendant wilfully fails to appear at the time of the trial the said trial may be conducted in his absence, a vote taken by the tellers appointed by the President, a verdict announced and a penalty imposed.

Art. XXIII. Subdiv. 7. Section (q). Any member other than the President of the Local Union preferring charges against another member, as provided herein, must deposit Ten ($10.00) Dollars with the filing of said charges and in the event such charges are proved said deposit shall be returned to the member filing the same and, if not proved, shall be forfeited to the Local Union. Any member of a Local Union fined, disciplined or expelled shall have the right to appeal to the General Executive Board in the manner and form provided in the Constitution and the Laws and Rules established thereunder. Any appeal rightfully taken and properly filed wherein the penalty of expulsion is imposed shall cause the order of expulsion to be stayed until

decision of the General Executive Board thereon. Unless by action of the General Executive Board thereon, waiving the requirement, no member may appeal from the imposition of a fine unless and until such fine shall first be paid by him.

Trials of members within Local Unions under International Supervision shall be by and before the General President or his deputy thereunto assigned who shall be authorized and empowered to hear and decide the same. In all such cases charges of infractions of the Constitution, by-laws, ritual and rules against a member shall be filed with the Supervisor who shall serve the accused with copies thereof and upon reasonable notice thereafter the General President or his deputy thereunto assigned shall hear, try and decide the case and administer the penalty from which sentence the aggrieved party may appeal to the General Executive Board in the manner governing appeals under the Constitution.

ART. XXIII—SUBDIVISION 8

RECALL OF OFFICERS

Whenever twenty-five (25) per cent of the members in good standing in a Local Union shall file with the Recording-Corresponding Secretary a petition requesting the recall from office of any officer of the Local Union elected and holding office for a term of more than one year within 30 days thereafter a special meeting of the Local Union shall have been called and held with all petitioners present thereat, which special meeting shall have been devoted to verifying the signatures of all petitioners to said recall petition and the certifying by the Financial Secretary of

the good standing of each petitioner, then and not otherwise the Recording-Corresponding Secretary shall notify all members in good standing of: 1st, the filing of the petition; 2nd, the holding of such special meeting, and, 3rd, the date set for the voting upon the recall (which date shall be the third regular meeting following the mailing of such notice) and a vote thereon shall be taken at such meeting. The voting upon the recall shall be by secret ballot conducted by three tellers, one of whom shall be a petitioner, one appointed by the President and one elected by the members present at the meeting. No officer shall be recalled unless there be cast a two-thirds vote of the entire membership in good standing in favor thereof and upon the rendition of the required vote the said office shall become vacant.

ART. XXIII—SUBDIVISION 9

QUORUM

A quorum for the transaction of business at meetings of a Local Union shall consist of not less than seven (7) members in good standing.

ART. XXIII—SUBDIVISION 10

MEETINGS

Monthly Meetings

Art. XXIII. Subdiv. 10. Section (a).

All Local Unions shall have at least one regular meeting each month and as many other regular meetings as may be necessary for the proper transaction of business. Where Local Unions are

authorized to operate under a district administration form of government, or have received special dispensation the meetings thereof, whether general or district, regular or special, shall be as required by the by-laws.

Annual Meetings

Art. XXIII. Subdiv. 10. Section (b). The annual meeting of Local Unions shall be the last meeting in June of each year.

Special Meetings

Art. XXIII. Subdiv. 10. Section (c). Special meetings shall be called when ordered by the President or by a majority of the following officers: Vice President, Recording-Corresponding Secretary, Financial Secretary, and Treasurer, or upon written request of one-third of the members of the Local Union in good standing.

ART. XXIII—SUBDIVISION 11

RELATIONS WITH EMPLOYERS

Grievances and Procedures

Art. XXIII. Subdiv. 11. Section (a). No action shall be taken by any Local Union, Local Executive Board, Officer, Committee or Business Representative of a Local Union affecting the relations between an employer and the Local Union or its members unless authorized as hereinafter provided.

Art. XXIII. Subdiv. 11. Section (b). When a difficulty or a dispute arises between an employer and a member or members in good standing in a Local Union such member or members shall first report the same to the Business Represent-

ative or the Local Executive Board or the Local Union. The Business Representative, Local Executive Board or the Local Union shall immediately investigate the facts and confer with the employer with a view of adjusting said difficulty or dispute. If no settlement of the dispute has been effected then the authority investigating the facts connected with said dispute may, if vested with the power so to do, immediately order and direct any necessary action deemed as required under the circumstances, through the removal of the member or members affected, through strike or by stoppage of all work, or by securing a strike of all such other trades and workmen as can be obtained. Where Local Unions are affiliated with Councils of Labor and like bodies in their respective communities such Local Unions may take such action upon grievances or disputes between employers and employes as shall be recommended or authorized by the Labor Councils and other bodies with which they may be associated regardless of whether such grievances or disputes arise between members of a Local Union in this organization or members of any other union, with employers.

Art. XXIII. Subdiv. 11. Section (c). No Local Union through its committee, Local Executive Board or Business Representative shall attempt to take or take any action involving a rupture of relations existing under a legal contract with any employer or declare a strike where such contract exists except upon the following reasons, viz:

1. Assisting trade unions or other union workmen.
2. Assisting Councils of Labor or other bodies with which the Local Union is affiliated.

3. Violation by the employer of the written contract.

4. To protect the craft jurisdiction or the territorial jurisdiction of the Local Union.

Nor shall any such action be attempted or taken unless the same has been sanctioned by the General President of the International Union.

Sanction of the General President

Art. XXIII. Subdiv. 11. Section (d).

If the dispute shall not be settled and the Local Union shall desire assistance or strike benefits from the International Union the General President shall be informed of all the facts thereof, and, if in his opinion the grievance is a just one, he may give his sanction and give the support of the International Union to the action contemplated or already entered into by the Local Union, its Committee, Local Executive Board or Business Representative. If, under any circumstances, the General President shall be represented by a deputy in the investigation of a dispute or a contemplated action or an action that has already been entered into on the part of a Local Union, its Local Executive Board, its committees or its Business Representative, the deputy shall report in detail to the General President and the General President can through a deputy convey such sanction and support required as though present in person.

Contracts

Art. XXIII. Subdiv. 11. Section (e).

All agreements and modifications thereof between Local Unions or the members thereof and the employers shall require, before becoming effective,

the approval of the General President in writing, or by telegraph. An agreement may be consummated for Local Unions by a committee, by the Local Executive Board or the Business Representative, but such agreements as may be consummated for a Local Union shall not become effective until they have been presented and read to the Local Union at its next regular meeting following the date of the execution of the agreement or modification thereof and the membership at such meeting have approved and accepted same. When such approval and acceptance have been obtained then such agreements shall be signed by the Local Union's President and Recording-Corresponding Secretary.

ART. XXIII—SUBDIVISION 12

BY-LAWS AND TRADE RULES

Local Unions may adopt and amend by-laws and trade rules by a majority vote of all members present at a regular meeting, or by mail referendums directed to the membership. No by-laws or trade rules may be adopted in contravention of the Constitution, laws, rules, obligation or ritual of the International Union, or the decisions, rulings, orders and directions of any authority of the International Union empowered by this Constitution to make them, or without the approval of the General President. Copies of all by-laws and trade rules, immediately following their adoption, shall be transmitted by the Recording-Corresponding Secretary to the General President and the General Secretary-Treasurer.

ART. XXIII—SUBDIVISION 13

DISSOLUTION

No Local Union shall dissolve or withdraw from the International Union of Operating Engineers over the dissent of seven (7) members in good standing.

ART. XXIII—SUBDIVISION 14

PARLIAMENTARY LAW

Roberts' Rules of Order shall be the parliamentary authority on all procedure not covered by the Constitution, Laws, Rules, Obligation and Ritual of the International Union or Local Unions subordinate thereto.

ARTICLE XXIV

ENACTING AND REPEALING CLAUSE.

This Constitution shall be adopted and go into effect on the date subsequent to the holding of a Referendum therefor when there is filed with the General Secretary-Treasurer by the Official Tellers a certificate that the required vote for adoption has been cast therein. All previous Constitutions are hereby repealed.

ARTICLE XXV

DISTRICT ADMINISTRATION FORM OF LOCAL UNION GOVERNMENT

Art. XXV, Section 1. Where the circumstances of a Local Union so require, and proper by-laws duly approved by the General President shall

have been adopted by the Local Union, it may proceed under a district administration form of government, under which form of government it may, among other things, be empowered to:

(a) Designate or amend the districts into which its territorial jurisdiction is confined;

(b) Provide for the organization, administration and supervision of its districts;

(c) Provide for the holding of regular monthly district meetings with authority limited to making recommendations to the Local Union, initiating legislation and referendums to the Local Union, holding trials of members and electing such representation to the local executive board, committees and similar bodies as may be provided under its by-laws;

(d) Designate and empower the local executive board, in addition to its constitutional powers, to act for the Local Union in business and administrative matters (including the election of delegates, election of members, and reinstatement of members and similar duties) in the interim between regular meetings of the general membership of the Local Union, all of which acts of the local executive board to remain in full force and effect subject only to revocation by action of the general membership of the Local Union if taken at the next subsequent general membership meeting following the adoption of the act in question, or subject to being revoked by referendum initiated by any district and submitted to the general membership of the Local Union within 30 days subsequent to

the adoption of the act complained of should no general membership meeting occur during such period;

(e) Authorize and empower the acts of a local business manager;

(f) Adopt or amend by-laws by referendum or at general membership meetings covering the fixing of dues, establishing of working conditions and other pertinent subjects;

(g) Provide for the holding of but two or more regular meetings of the general membership per year and the method of convening other called meetings thereof, all of which meetings to be deemed regular meetings of the general membership for the purposes outlined in the Constitution;

(h) Together with such other powers as may be deemed necessary and incidental in effectuating the normal administration of business of the Local Union.

TRIALS OF MEMBERS UNDER DISTRICT ADMINISTRATION FORM OF GOVERNMENT

Art. XXV. Section 2. Whenever a Local Union shall be qualified to proceed under the district administration form of government, the trials of any of its members, upon charges, may if its by-laws so provide, be before the district membership meeting and in such cases any infraction of the Constitution, ritual, by-laws or rules by a member invoking discipline against him which would otherwise be triable under the Constitution before a general membership meeting of a Local Union

shall, under this section and with the same force and effect, be heard and acted upon by and before the regular district membership meeting in the district wherein the infraction or cause arose, all pertinent constitutional procedure governing trials, charges and penalizing of members, shall apply to such trial and procedure before regular district membership meetings and any member aggrieved by such procedure or the penalty assessed therein may appeal therefrom direct to the General Executive Board in the manner and form governing appeals under the Constitution.

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CERTIFICATE OF THE OFFICIAL TELLERS AND CERTIFIED PUBLIC ACCOUNTANTS TO THE HOLDING OF THE OFFICIAL REFERENDUM AND THE RESULTS THEREOF, WHICH WAS SUBMITTED UNDER DATE OF SEPTEMBER 30, 1938, TO THE MEMBERSHIP OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, THROUGH THEIR RESPECTIVE LOCAL UNIONS, UNDER AUTHORITY OF CASE NO. 7 OF THE MEETING OF THE GENERAL EXECUTIVE BOARD OF AUGUST 12 - SEPTEMBER 1, 1938.

We, the undersigned, duly appointed as Tellers by the General Executive Board under authority of the Constitution of the International Union of Operating Engineers, and in accordance with Article XX thereof, upon meeting in the General Office, 1003 K Street, N. W., Washington, D.C., beginning at 10 A. M. Wednesday, December 28, 1938, and having received the certified tally sheets of the balloting of all affiliated good standing local unions and their respective branch local unions reporting thereon, in the manner in which they had been received for the Tellers through the mail, and also having checked the same against the official tabulated list of all good-standing local unions in affiliation with the International Union of Operating Engineers received from the General Secretary-Treasurer, upon which list was indicated the number of members in good standing in each of said local unions and their respective branch local unions, for the period during which said referendum and balloting was conducted; and also having reviewed the procedure adopted by the General Secretary-Treasurer whereby each and every local union and their respective branch local unions in good standing had been properly apprised of said referendum by having been mailed a printed copy of the referendum, the instructions in connection therewith, a printed copy of the proposed revised Constitution, and sufficient blank ballots for all good-standing members in each local union and the respective branch local unions, a printed blank official tally sheet, and a self-addressed envelope directed to the Tellers, - do hereby certify upon concluding the counting of the ballots on December 31, 1938, as follows:

1st: That on the 30th day of September, 1938, there was duly submitted by the International Union of Operating Engineers to all local unions and the members thereof constituting the entire membership of the International Union of Operating Engineers, copies of a draft of a proposed revised Constitution and ballots containing the following language:

"Shall the Constitution of the International Union of Operating Engineers and Local Unions coming under its jurisdiction, as revised and submitted by the duly appointed Constitution Revision Committee under authority of a referendum submitted March 25, 1938, and passed June 14, 1938, become the Constitution of the International Union of Operating Engineers and Local Unions coming under its jurisdiction, and go into effect as provided in Article XXIV thereof?"

2nd: That a general referendum of the entire membership of the International Union of Operating Engineers, in the manner and form required by its Constitution, was held upon the question presented and a vote taken by all entitled to vote thereon, and all votes, ballots, and reports were thereafter filed with the undersigned Tellers, and carefully audited and scrutinized by them.

3rd: That the Constitutional requirements governing the voting, ballots and quorum in said referendum have been complied with, and the results of our tabulations disclose that 462 local unions and their branch local unions participated in the voting thereon; that the total number of votes cast was 34,344 and that 30,975 ballots were cast in favor of the question presented and 3,369 ballots were cast against the question presented, and the undersigned official Tellers do hereby certify that the required vote for the adoption of the question presented in said referendum has been cast therein, and the revised Constitution referred to has been adopted.

Signed this 31st day of December, 1938.

M. A. McConville

M. A. McConville, Chairman,
Member of Hoisting and Portable Local No. 14
of New York, N. Y.

Peter Lucken

Peter Lucken, Member of Stationary Local No. 34
of Minneapolis, Minn.

Joseph I. Haley

Joseph I. Haley, Member of Stationary Local No. 556
of Chicago, Ill.

Subscribed and sworn to before me this 31st day of December, 1938.

W. [illegible] Keary

Notary Public, D. C.

My Commission expires October 31, 1939

CERTIFICATE OF CERTIFIED PUBLIC ACCOUNTANTS.

The undersigned, NICKELS & JANSSON, Certified Public Accountants, hereby certify that we have examined the procedure and audited the results of the Referendum conducted by the International Union of Operating Engineers upon the question of the adoption of a Revised Constitution, as submitted to the membership of the International Union of Operating Engineers, and the report of the official Tellers submitted thereon, and so find them to be correct and in conformity with the Constitution of the Organization.

Signed this 31st day of December, 1938.

NICKELS & JANSSON

By O. Edwin Nickels

The foregoing Certificate was duly filed with the General Secretary-Treasurer of the International Union of Operating Engineers on the 31st day of December, 1938.

F. J. Fitzgerald

General Secretary-Treasurer
INTERNATIONAL UNION OF OPERATING ENGINEERS

Answer to Amended Complaint [in Civil Action No. 14547]

ANSWER TO AMENDED COMPLAINT [IN CIVIL ACTION NO. 14547].

The defendants above named, "William E. Maloney and Hunter P. Wharton, Individually and as Representatives of and on Behalf of the International Union of Operating Engineers", by their attorney, make answer to the Amended Complaint in the above matter as follows:

Wherever in this Answer it is alleged that the defendants do not know the truth or falsity of an allegation of the plaintiffs, or where an allegation is denied for lack of sufficient information, such averment is intended to have the meaning, without repetition, that defendant is without knowledge or information sufficient to form a belief as to the truth of the corresponding averment of the Amended Complaint.

FIRST DEFENSE.

Defendants admit that this action purports to be a class action on behalf of all members of the Local Union referred to, but deny that the plaintiffs do in fact represent, or have the power or authority so to represent or act on behalf of the other members of said Local Union and its Branches. It is also averred that the number of the total membership of said Local Union and its Branches fluctuates from time to time, and defendants have no knowledge as to the total number of such membership as of the date of the institution of this action.

1. Defendants lack sufficient information to admit or deny the averments of paragraph 1 as to the respective States of which the respective plaintiffs are alleged to be citizens and

residents. It is further averred that the institution of this action by plaintiffs, the false, malicious and defamatory allegations made by them in said Amended Complaint, and their conduct in connection with the incidents referred to in the Amended Complaint, as hereinafter more fully referred to, were and are flagrant violations of their obligations as members of the International Union of Operating Engineers, of the provisions of the Constitution thereof, and of their express written agreement with the Union, hereinafter referred to.

2. Admitted, except that the averment that such operations are performed "in interstate commerce" is a conclusion of law which defendants believe and therefore aver they are not required either to admit or deny.

3. Denied as averred. It is admitted that said Local Union 542 is a duly chartered Local Union of the International Union of Operating Engineers. It is further averred that the powers and jurisdiction of said Local Union are such as are specifically set forth in said Charter, and that the provisions of said Charter are in all respects subject to each and all of the provisions of the Constitution of the International Union of Operating Engineers.

4. Admitted.

5. Admitted.

6. Admitted, except that said defendant is not an official of the International Union of Operating Engineers.

7. Admitted as to the defendant Maloney, but denied as to the defendant Wharton.

8. It is denied that the defendant Maloney at any time

took personal control of all or any of the assets of Local 542, and it is denied that any act of defendant Maloney was in violation of the Local's alleged rights to autonomy under the International Charter. On the contrary it is averred that the management and conduct of the business and affairs of said Local had been under general supervision prior to and at the time defendant Maloney became General President of said International Union. Under his regime as General President the said business and affairs of said Local continued, until the election hereinafter referred to, to be managed and conducted under International supervision, but solely for the benefit of the membership of the Local to the end that the rights of its members would be protected, their property safeguarded, and their affairs administered with fairness and in a businesslike manner, and in accordance with the Constitution, Laws, Customs and Ritual of the International Union.

It is denied that under the regime of defendant Maloney there was any mismanagement of any nature by him with respect to the property and affairs of said Local. It is denied that said International supervision of said Local, during the period referred to, was terminated by Court Order, as alleged in the Amended Complaint. The election referred to was held by agreement of the parties.

9. It is denied that under the leadership of President Underwood, the business and affairs of Local 542 were conducted in a highly satisfactory and successful manner, in the best interests of the Union and its membership and in full accord with the law.

10. It is admitted that shortly prior to May 1, 1952, Local 542 effected a new agreement with certain employers to replace the existing collective bargaining agreement, and that no agreement was then effected with the remaining employers in the Local Union's geographical area, and that a

strike was called against the latter group. Defendants do not know the truth or falsity of the allegation that the contract so negotiated was executed by "the majority of employers" and that the employers with whom no contract was negotiated constituted "a small minority of employers".

11. Defendants are without sufficient information to admit or specifically deny the allegations of paragraph 11, and therefore demand proof thereof if deemed material.

12. It is averred that the International Union first had knowledge of the strike some time after it had been called. It is further averred, however, that the calling of said strike was in direct violation of the express provisions of Article XXIII, Subdivision 11, Sections (a) and (c) of the International Union Constitution in that the same was never authorized or sanctioned by the General President of the International Union.

13. The defendants do not know the truth or falsity of the allegations that the said strike had been successfully carried on for a number of weeks and that various attempts had been made by employers to break the strike, and if material to this cause demand proof thereof. Defendants deny that any representatives of the employers at any time improperly influenced defendant Maloney, or attempted so to do, to use his authority and office for the purposes alleged in paragraph 13 of the Amended Complaint. On the contrary after the strike had been in effect for many days, said defendant as General President of the International Union received an appeal for action on his part from the Governor of Pennsylvania, and numerous complaints from many sources of widespread dissension within the Local Union over the continuance of the strike and the conduct of said Underwood with respect thereto, and the effect thereof upon the prestige of the International and Local Unions in

the area, and upon many millions of dollars worth of public and private construction. Each and every action taken by said defendant in the premises was influenced and motivated solely by the conclusion of said defendant, as General President of the International Union, that such action was in the best interests of the International and Local Unions and their members, and of the public.

14. It is denied that said defendant Maloney brought any pressure of any nature to bear upon said Underwood pursuant to any understanding of any nature with employer representatives. It is further denied that defendant Maloney ever directed or suggested to said Underwood the abandonment of the Union's demands in the premises, or the termination of the strike in an improper manner.

15. Denied as averred. It is admitted that defendant Maloney directed the calling of a meeting of the local Union and directed that said meeting be notified of said defendant's position concerning the issues.

16. Denied as averred. It is admitted, however, that a meeting of the Local Union was held on August 5, 1952 and that the persons in attendance at said meeting voted to continue the strike.

17. Denied as averred. It is admitted however that the letter a copy of which is attached to the Amended Complaint as Exhibit 1-C was signed by General Vice President McDonald and mailed, but it is averred upon information and belief that said letter was not written by said General Vice President McDonald but was composed and dictated by the attorney for plaintiffs in this case.

18. Denied as averred. Defendants have no knowledge as to the truth or falsity of the allegations concerning the

arrangement of a meeting with certain of the employers or the cancellation of such alleged meeting. It is denied that the defendant Maloney at any time was a party to any conspiracy of any nature with any employer representatives or that he ever acted in any respect pursuant to any such alleged conspiracy. It is admitted that the defendant Maloney duly issued the Order and Instructions a copy of which are attached to the Amended Complaint as Exhibit 1-D, and avers that the same was properly issued by him as General President of the International Union in full accord with the authority vested in him so to do under the Constitution of the International Union and the Charter of the Local Union.

19. Denied as averred. It is admitted that the Executive Board of the Local Union, acting under the domination and control of said Underwood and his counsel, defied the said Instructions and Order of the defendant Maloney, and that said Underwood thereupon instituted action in this Court as of Civil Action No. 14071 in an effort, inter alia, to enjoin enforcement of said Instructions and Order of the defendant Maloney.

20. Admitted, except that it is denied, as more fully hereinafter set forth, that said action was filed for the purpose of obtaining a declaratory judgment. It is further denied, upon information and belief, that the said civil action was instituted pursuant to said alleged resolution of the Executive Board of the Local Union. On the contrary it is averred upon information and belief, that the Complaint in said case was prepared prior to the adoption of the said alleged resolution of the Executive Board of the Local Union.

21. Denied as averred. It is averred that the Order Invoking International Supervision, a copy of which is attached to the Amended Complaint as Exhibit 1-E, speaks

for itself as to the action taken in the premises by defendant Maloney as General President of the International Union. As expressly stated therein, the Order was issued for the purpose of conserving the assets of the Local Union to be administered:

> "as a trust solely for the benefit of the membership to the end that the rights of members will be protected; their property safeguarded; their affairs administered with fairness and in a businesslike manner, and that the Constitution, Laws, Customs, Ritual and Authority be recognized and enforced by the membership."

And said Order further specifically provided for a hearing thereon, which was duly held on August 26, 1952, and was attended by plaintiff and other representatives of the Local Union. A true and correct copy of the Report of the Hearing Officer who conducted said hearing is attached hereto, made a part hereof, and marked Exhibit "A".

It is averred that an Appeal, a copy of which is attached to the Amended Complaint as Exhibit 1, was duly taken from said Order of Supervision, which Appeal is now pending and is being processed by the General Executive Board in conformity with the Constitution. And it is further denied that said Board failed to hold a hearing upon the said Appeal. Plaintiffs were duly notified of the date and place of hearing upon said appeal, but none of the plaintiffs appeared, nor has any effort since been made by plaintiffs to proceed with the appeal or with any other remedy under the International Constitution.

22. Each and all of the averments of paragraph 22 are denied. On the contrary the said Order was intended to and did in fact have the effect expressly stated therein. It was not designed to nor did it in fact eliminate the Local's officials or former officials from participating in the said arbitration proceedings, but some of said officials, including

the plaintiffs, voluntarily failed and refused to assist or participate therein. The Union representatives at said arbitration proceedings presented and attempted to obtain each and all of the demands which had been made on behalf of the Local during the collective bargaining negotiations with the employers. No demands or rights of the membership of the Union of any nature whatsoever were lost as a consequence of any action by said defendant Maloney or any representatives appointed by him in the premises.

23. It is denied that the said actions and orders of the defendant Maloney were in any respect illegal, improper or in violation of the Constitution and Ritual of the International Union and or of the Constitution and Laws of the United States. On the contrary it is averred that each and all of said actions and orders of said defendant Maloney were in full accord with said Constitution and Laws, and that each and all of said actions and orders were urgently required for the protection of the interests of the said Local and International Unions and their members against the actions of said Underwood and his small coterie of followers, including the plaintiffs herein, whose conduct in the premises was illegal, improper and in violation of said Constitutions and Laws, in the respects more fully herein set forth.

24. It is denied that said defendant Maloney caused said charges to be filed against said Underwood. On the contrary it is averred that said charges were filed by William E. Carter, the Hearing Officer who had been duly appointed to conduct the hearing upon the above-mentioned Order Invoking Supervision. It is admitted that the charges against plaintiff were heard by the General Executive Board of the International Union on September 17, 1952. Each and all of the remaining averments of paragraph 24 of the Amended Complaint are denied, except that it is admitted

a unanimous decision was rendered by said Board, but with defendant Maloney abstaining from participating therein, the terms of which speak for themselves. It is further averred that under the Constitution, Laws and Ritual of the International Union complainants and defendants at hearings before the Union's tribunals may present their own cases or by counsel selected from among the membership of the International Union and no parties to such proceedings are permitted to be represented by counsel who are not Union members. The said hearing was in all respects conducted in accordance with the Union Constitution and Laws and with every requirement of due process, and plaintiff was afforded the opportunity of producing any and all witnesses and evidence available to him, and he voluntarily admitted at the conclusion of said hearing that he had received a full and fair trial. The consideration and decision of the General Executive Board upon said charges was entirely free and independent and in no respect was the said Board or any of the members thereof dominated, controlled, coerced or influenced by defendant. The proceedings before said Board were fully reported in the decision of said Board, as will appear upon reference thereto, a copy of which is attached to the Amended Complaint filed in the action instituted by said Underwood and pending in this Court as Civil Action No. 14398 as Exhibit 3, and it was reported and published in one of the regular publications of the International Union a copy of which is regulary forwarded to each of the members of the Union. It is further averred that the said Decision and Opinion of the Executive Board were based solely upon the facts and evidence adduced at the said hearing, and that the said decision is in full accord with said facts and evidence and is in no respect contrary to law.

25. Each and all of the averments of paragraph 25 of the Amended Complaint are specifically denied, except that the

defendant Hunter P. Wharton was duly appointed by General President Maloney as his Deputy and International Supervisor over Local Union 542 and its Branches, as set forth in the said Order a copy of which is attached to the Amended Complaint as Exhibit 1-E; and in accordance with said appointment said defendant Wharton duly proceeded with the performance of his said assigned duties.

It is further averred that said defendant Wharton, assisted by and in collaboration with the Officers and Executive Board of said Local Union 542, has at all times since his appointment administered the business and affairs of said Local Union and its Branches in a careful and businesslike manner. The assets have been conserved solely for the benefit of the membership, the rights of the members have been protected and their property has been safeguarded. The various Welfare Funds which were in existence at the time International supervision was invoked and which had largely ceased to function because of the chaotic conditions resulting from the gross mismanagement of the business and affairs of said Local Union by said Underwood and his followers, were consolidated into a new Welfare Trust Fund by Decree of this Court dated January 8, 1953, in the cause entitled "Civil Action No. 12559". The said Welfare Trust Fund has since been capably and effectually administered by the Trustees designated in the Trust Agreement as approved by said Decree of this Court. The receipts, expenditures and financial accounts of the Local Union and of the Welfare Trust Fund have been regularly audited at periodic intervals by certified public accountants.

26. Each and all of the averments of paragraph 26 are denied. On the contrary it is averred that as a result of the intervention and efforts of the defendant Maloney the disastrous strike was ended; all building and construction employees were restored to work; the points in dispute with the contractor associations were submitted to arbitration

and fairly decided thereunder; contracts with the employer associations were entered into and the members of Local Union 542 and its Branches are now gainfully employed thereunder; the Welfare Funds were consolidated and are now operating to the benefit of the members of Local 542; all of which was accomplished in spite of the resistance and objection of Underwood and his followers; and all of which was accomplished in and for the benefit and great gain of the membership of said Local Union.

SECOND DEFENSE.

27. It is further averred that defendant, William E. Maloney, is a citizen of the State of Illinois, that his office and usual place of business is at 1003 K Street, Washington, D. C., that he has no office or place of business in the City and County of Philadelphia or in the State of Pennsylvania, that no service of the Complaint in this case was made upon him nor upon any agent authorized by appointment or by law to accept service on his behalf, either individually or as representative of the International Union of Operating Engineers.

28. It is further averred that this Court therefore has no jurisdiction over the defendant William E. Maloney, either individually or as representative of the International Union of Operating Engineers.

29. It is further averred that the defendant Wharton is not an officer or official or representative of the International Union of Operating Engineers for the purpose of service upon and/or jurisdiction over said International Union of Operating Engineers.

Wherefore the return of service in this case should be quashed, and the action should be dismissed as to the de-

fendant Maloney individually and as representative of the International Union of Operating Engineers, and as to the defendant Wharton as representative of the International Union of Operating Engineers. This Court further lacks jurisdiction over the International Union of Operating Engineers due to the lack of diversity of citizenship and to the further fact that no service has been made upon a proper representative of said International Union of Operating Engineers or upon other necessary parties.

THIRD DEFENSE.

30. Plaintiffs are estopped to maintain this suit or have it filed in their behalf for the reason that they have failed to exhaust their rights and remedies within their organization in accordance with the provisions, inter alia, of Article III, Section 1, Article V, Sections 2 and 7, Article VI, Section 6, and Article XVII of the Constitution of the International Union, which is a contract and agreement by which all plaintiffs and all members of the Local Union and the International Union obtain and hold their membership. A true and correct copy of said Constitution is attached hereto, made a part hereof, and marked Exhibit "B".

31. It is further averred that on or about September 13, 1952 there was filed with the General Executive Board an appeal on behalf of Local Union 542, its officers and members seeking to remove the International supervision over Local Union 542 which had been invoked by the General President's Order of August 19, 1952, and that said appeal is duly pending before the General Executive Board.

32. A hearing thereon before the General Executive Board was scheduled at the regular meeting of the Board in Miami, Florida on February 10, 1953, and the plaintiffs were duly

notified thereof. A request was made on behalf of the plaintiffs and Local 542 to delay said scheduled hearing and to hold hearings within or near the jurisdiction of Local Union 542 to allow members opportunity to be present thereat and to be heard. Plaintiffs were informed through their representative that such request should be formally presented to the General Executive Board for consideration and action, but no further action was taken with respect thereto by plaintiffs or anyone on their behalf.

33. Neither plaintiffs nor representatives of Local Union 542 appeared at the General Executive Board in support of said appeal, at its meeting on February 10, 1953. The said appeal was thereupon continued as an active pending appeal.

34. Thereupon the International Union caused an Interim Hearing Board to be appointed with instructions to hold hearings within the jurisdiction of Local Union 542 for the purpose of permitting members thereof to attend in person and express themselves as in support of or against said appeal, and upon other matters connected with the welfare of Local Union 542.

35. Many meetings of the Interim Hearing Board were then held throughout the district of Local Union 542, and hundreds of members appeared and gave testimony. None of the plaintiffs appeared at any of said hearings, and they sought to persuade other members of the Union not to attend said hearings. The Interim Hearing Board is still pursuing its labors and has rendered a partial report in the premises, a copy of which Report is attached hereto, made a part hereof and marked Exhibit "C".

36. The Interim Hearing Board will as soon as possible render its final report, which will be filed with and be acted

upon by the General Executive Board. By virtue of all of which it is averred that the appeal of Local Union 542 is now duly pending before the General Executive Board, and is being processed (although not by the plaintiffs) in conformity with its Constitution, Rules and Customs, that due notice of the proceedings thereof has been given to all affected parties, and that a further hearing or hearings will be scheduled thereon in the ordinary course of business before the General Executive Board, due notice of which will be given to the plaintiffs and all other interested parties.

Wherefore the plaintiffs are now estopped to bring this action because (a) they have failed to avail themselves of or exhaust their remedies within the tribunals of the Union, and (b) there is presently pending and undisposed of before the General Executive Board the said appeal filed on behalf of Local 542, its officers and members, including the plaintiffs, involving the same issues.

FOURTH DEFENSE.

37. Each of the plaintiffs upon becoming a member of the International Union was required to and did execute an Application for Membership in the form a true and correct copy of which is attached hereto, made a part hereof, and marked Exhibit "D". The said application, upon acceptance by the Union, became and continues to be a presently valid and effective contract, and provides in part as to each plaintiff that he

> "* * * will not violate any of the provisions of the Constitution * * *. I further agree in the event of a claimed grievance against the Union to faithfully observe the procedure of and fully accept as final the findings of the Trial Boards within the Order; and I hereby expressly waive any right to institute proceed-

ings in any court of law or equity against the Union; * * *"

38. The institution of the instant suit by plaintiffs is a flagrant violation and breach of the express covenant not to sue contained in each of said written agreements.

39. Each of said plaintiffs also executed and agreed to become bound by the "Obligation Required for Membership" contained in said Application for Membership, which provided, inter alia, as follows:

> "* * * I further promise that I will not become a party to any suit at law or in equity against this Local Union or any other Local Union of which I may become a member or against said International Union, until I have exhausted all remedies allowed to me by said Constitution, Laws and Rules, before the tribunals of my Local Union and of said International Union, regardless of my opinion as to the fairness of justice which may be accorded to me by any or all such tribunals. I further promise to conform to and abide by said Constitution, Laws and Rules and also all Regulations, Decisions and Orders provided for in said Constitution, General Laws and Rules, and as given by the officers in authority."

40. It is further averred that Article XVII, Section 3 of the said Constitution provides:

> "No suit or other action at law or equity shall be brought in any court by any member, officer or subdivision of the International Union of Operating Engineers until and unless all rights, remedies and provisions for hearing, trial and appeal within the Organization shall have been properly followed and exhausted by the member, officer or subdivision complaining."

41. The institution of the instant suit by plaintiffs is also a flagrant violation and breach of their respective solemn obligations and the express provisions of the said Constitution above referred to.

Wherefore plaintiffs and each of them are estopped to assert the alleged cause of action set forth in the Amended Complaint, and this action should be dismissed. This Court has no jurisdiction of the subject matter of this action in view of the failure of plaintiffs so to pursue and exhaust their said remedies under the said Constitution.

FIFTH DEFENSE.

42. The issuance by defendant Maloney as General President of the International Union of the said Order of August 19, 1952 invoking International supervision was in all respects in accordance with full and complete authority so to do vesting in him pursuant to the express provisions of the said Constitution, including Article III, Section 1, Article V, Section 2, and Article VI, Sections 3 and 9.

43. This Court has no jurisdiction to assert, as prayed for by plaintiffs in the Amended Complaint, the right to substitute its judgment for that of the said General President in the exercise of his power, authority and discretion under the said express terms of said Constitution, or to declare said Order to be void and/or illegal.

SIXTH DEFENSE.

44. Plaintiffs herein do not constitute a class, and are not fairly representative of the members of said Local Union.

A large majority of the members of said Local Union, alleged to constitute the class claimed to be represented by the plaintiffs, are completely opposed to the remedies sought and asserted by plaintiffs in their Amended Complaint.

Wherefore this action should be dismissed as not a proper class action.

SEVENTH DEFENSE.

45. It is averred that plaintiffs are members of cliques or clubs wrongfully operating within the membership of Local Union 542 contrary to the best interests of the said Local Union and for the purpose of improperly influencing control of the Local Union for the personal benefit of the plaintiffs and the members of the said cliques. These said cliques or clubs have long been ordered to dissolve and disband by the International Union, but the plaintiffs and the members of the said cliques refuse to so disband, and continue their operations in defiance of their International Union. The plaintiffs and the said cliques have aided and abetted said Underwood in the perpetration of the following types of improper conduct:

1. The prolongation of said strike contrary to the best interests of the membership.

2. The rejection of the means available for the peaceful negotiation and settlement of the strike issues.

3. The incurring of the ill will of the Building Trades Council of Philadelphia and its 6500 members who were thrown out of work because of the said strike, as a result of which said Building Trades Council condemned the continuance of said strike by the plaintiff and adopted resolu-

tions forbidding their members to work on any job on which a member of Local 542 was employed.

4. The causing of widespread dissension within the Local Union as the result of such conduct, and the creation of demands among its members for separation and separate charters and for supervision by the International Union.

5. The improper diversion of funds of Local 542 to hire pickets from other unaffiliated unions.

6. The bringing of the Local Union and the International Union into disfavor and public disrepute as the result of the conduct and continuance of said strike, resulting in a personal appeal from the Governor of Pennsylvania to defendant Maloney to procure a resumption of work on public projects.

7. The adoption by the Executive Board of Local 542, of which some of the plaintiffs were members, of a resolution designed to resist and circumvent all actions in the premises by the International and prevent the exercise of its powers and authority under the Constitution.

8. The filing in this Court of Civil Action No. 14071, in which, inter alia, outrageously false, malicious and defamatory allegations were made charging misconduct on the part of the General Officers of the International, alleged improper and illegal conspiracy with third persons, and alleged violation of the Clayton and Sherman Acts through an alleged conspiracy on the part of the General President of the International alleged to have been designed to defraud the members thereof; and the subsequent stipulation for the formal dismissal of record of such action with prejudice when full publicity to said false, malicious and defamatory statements had been obtained in the law suit.

Answer to Amended Complaint [in Civil Action No. 14547]—Exhibit "A"

Wherefore defendants further aver that by reason of the said facts and of the other allegations in this Answer set forth, plaintiffs and each of them are guilty of unclean hands, and on that account should be denied relief by a Court of Equity.

WHEREFORE, defendants ask that the Amended Complaint be dismissed at plaintiffs' cost.

CHARLES A. WOLFE,
Attorney for Defendants.
1421 Chestnut Street,
Philadelphia, Pa.

WILLIAM H. THOMAS,
440 Leader Building,
Cleveland, Ohio.
MONTGOMERY, McCRACKEN, WALKER & RHOADS,
1421 Chestnut Street,
Philadelphia, Pa.
Of Counsel for Defendants.

EXHIBIT "A".

REPORT

To the General President of the
International Union of Operating Engineers,
1003 K Street, N. W.,
Washington, D. C.

In re: Local Union 542, International Union of Operating Engineers
Philadelphia, Pa.

Answer to Amended Complaint [in Civil Action No. 14547]—Exhibit "A"

Dear Sir and Brother:

Pursuant to the order of General President William E. Maloney, copy of which is herewith attached and is self-explanatory, I desire to submit report as his Deputy and Hearing Officer regarding Local Union 542 and the appearance of certain members thereof, in response to a notice to show cause contained in the General President's order of Supervision dated August 19th, 1952.

The hearing was set for 1:00 p. m. at the General Office, 1003 K Street, N. W., Washington, D. C. on August 26th, 1952. Due to a delay in train service, the parties did not arrive until 2:00 p. m. The following members were present representing Local Union 542:

Roy J. Underwood, President and Business Manager
Henry Lavery, Business Agent
Girard Leone, Business Agent
Homer Dawson, Business Agent
Vernon Brightbill, Business Agent
A. L. Smith, Business Agent
Peter Pantelez, Business Agent
Columbo Acchione, Member of the Executive Board and Trustee
James Russell, Master Mechanic of Freyn Company
Michael Concordia refused to state who he worked for.

The meeting got under way with the reading of the General President's letter to me, William E. Carter as Hearing Officer, following which the Delegation were asked to present its reasons in connection with the matter on hearing.

Brother Underwood acted as spokesman for the group and advised that all present were bewildered as to why the order of August 19th had been issued, and that there was no basis for the allegations contained in the order. That all allegations were denied and that all things which had been done by himself had been in accord with the Constitution

and that at the time supervision was invoked, he was simply acting as the Agent of Local Union 542.

Brother Dawson suggested that the letter of supervision be read and that a discussion take place point by point.

Brother Underwood read the letter of supervision and stated that the primary reason for ordering supervision no longer exists and did not exist at the time the order was issued. He stated the strike no longer existed and he admitted that action had been taken by the Philadelphia Building Trades Council as referred to in the General President's order.

He stated that he took issue with the General President as to the proceedings held in Chicago, and further stated that nothing had been agreed upon there by him. Upon the subject of loss of good will, Brother Underwood stated that this was an unknown substance and that it was impossible for him to put his finger on any instance of same. Therefore, he did not know about it.

He admitted that Governor Fine had asked for intervention by the International Union. He denied that any dissension existed on a rampant basis. He further denied that any members were seeking to withdraw or set up a separate charter or that supervision had been asked for and insisted that supervision was illegally imposed and that the orders of the General President were illegal and that in all instances he was bound to follow the membership, when the membership took issue with the top authority in the International Union.

On the subject of picketing during the recent strike Brother Underwood admitted that pickets had been secured from members in the Maritime Trades Council, but refused to tell how many pickets had been secured. He admitted that he had signed two checks for an undetermined amount, payable to the President of the Maritime Trades Council for picketing expenses.

On being asked whether the checks were for more or less

than one thousand dollars, he refused to answer. He also said that the Maritime pickets took divided authority from himself and from the Maritime Council officers. He reiterated that the General President's order of August 11th and of August 19th were both illegal and related about calling a meeting of his Executive Board on the morning of August 12th to resist the authority of the International Union and the General President.

He related that Mr. Friedman, Attorney for Local Union 542 was present and read the bill of complaint, but upon questioning, none of the other members present at the hearing could recall having heard the bill read.

Brother Underwood said he felt a lawsuit was necessary to resist the General President and that he gave the facts to Mr. Friedman, upon which the suit was based and that after the suit was drawn up, he, Brother Underwood, read it thoroughly and signed it. He said the allegations regarding conspiracy and violation of the Sherman Acts and the Clayton Acts and the linking of the contractors and J. Howard McGrath to the lawsuit was the attorney's idea, based upon the facts which Underwood had given to the attorneys.

When asked whether the charges of the lawsuit were in his opinion, commendable or creditable to the International or to the International Officers he wanted to know what "creditable" meant, but finally stated that the lawsuit as filed was something creditable in that it was necessary to prevent the International and the General President from imposing his will upon the Local Union.

At this point, Brother Underwood declined to answer any questions unless a record was made of such questions and answers thereto and although provisions were made to provide ample tablets and pencils, he stated he did not want any and did not want to make notes.

He was then asked the question as to whether an assessment had been placed upon the members of Local Union

542 with the approval of the General President, or the International Union. Brother Underwood refused to answer the question.

He was then asked whether an assessment had been collected from permit men working within his district. He again refused to answer.

He was asked whether he had information regarding resistance to following advice and instructions issued out of the General President's office by Brother Hill or Brother Wharton. He again refused to answer the question.

He also advised the other members present that they did not have to answer any questions they did not desire to.

At this point, Brother Brightbill said that to his knowledge no orders had been issued to disregard Brother Hill or Brother Wharton's authority.

Brother Smith testified to the same effect.

Brother Pantalea said yes there was some talk between him and the employer on the Morrisville job regarding the General President's authority issued through Hill or Wharton, but that he, Pantalea, had said no orders would be honored except such as came through his Business Manager.

The question was then asked whether the members of the Committee present knew what was in the bill of particulars of the lawsuit and if they had heard it read. Brother Girard Leone said he did not recall as having heard it read. Brother James Russell refused to answer the questions and no answer came from the remaining members present.

Brother Girard Leone at this point said he would recommend that the order of supervision be lifted and he thought he spoke the mind of nearly everyone present on the grounds that Attorney Friedman had misled the members of Local Union 542 and that the lawsuit was a mistake and that supervision should not be imposed because a lawsuit had been filed through an attorney's act.

He further stated that what he saw of the attorneys in

the Judge's Chambers at Philadelphia convinced him that the way they acted they were a disgrace to the profession.

At this point Brother Underwood joined in the conversation by accusing the International and the contractors of linking up together to beat down the men as shown by the conference in the Judge's Chambers in Philadelphia and stated that the International aligned itself with the contractors' attorneys in the Judge's Chambers to defraud the legitimate objectives of the Local Union.

This about concluded the testimony of the members present at the hearing and it was asked a number of times if any of those present desired to offer any other testimony of any nature in reference to the case in question and no answer was given by any of the Committee to this question. Therefore, the meeting was adjourned at 3:30 p. m.

As the presiding officer at the hearing I have come to the following conclusion regarding this case:

It is apparent from listening to Brother Underwood and observing the silence which took place most of the time on the part of the other members of his Committee that he (Brother Underwood) is dominating the picture and insisting that it was right for him to file any kind of a lawsuit against the International Union regardless of how bad the charges were contained therein and that he presents a picture of one who would do the same thing over again without any remorse. No excuse or apology was offered for resisting the International Union in trying to get this strike settled on August 11th. Only complete resistance to authority is observable in all of Underwood's statements and his general attitude during the hearing of refusing to answer questions.

There was nothing presented on the part of Local Union 542 which in any way justified a lifting of supervision of the Local Union at this time.

An important matter which I desire to bring to the attention of the General Executive Board has to do with the

filing of a very serious lawsuit by Brother Roy J. Underwood and his attorney against the International, its General President and General Officers.

Charges in lawsuit alleged misconduct on the part of the General Officers, alleged improper and illegal conspiracy with third persons, alleged improper relations between J. Howard McGrath and the General President, alleged violation of the Clayton and Sherman Acts through a conspiracy by the General President to defraud the members.

The lawsuit presents an outstanding example of a document which defames our General Officers. Here was a triple violation of the Constitution of our International Union by Brother Underwood, who as President and Business Manager of Local Union 542 was supposed to know the rules of the organization, and these violations were:

1. The deliberate defying of the Constitutional authority of the General President.

2. Circumventing the Constitution by filing a lawsuit when no complaint or charge had been filed within the International Union.

3. Using the lawsuit as a means to charge the General President and his fellow officers with the most reprehensible, derogatory and illegal conduct and then when full publicity had been attained in the lawsuit, to dismiss it with prejudice showing the utter baselessness of the allegations.

I charge that Brother Roy Underwood, in assisting in the preparation of this lawsuit, in verifying and filing it in the court and thereby causing it to become public property with notices in the newspapers, has published literature of a defamatory nature against our General Officers contrary to the provisions of Article XVI, Section 1, of the Constitution of the International Union of Operating Engineers and

that this is a matter which concerns every single member of our organization and is so serious as to deserve the attention of the General Executive Board of the International Union.

It is apparent that Brother Underwood was unwilling to make full disclosure at the hearing. I feel that on the question of irregular procedures by Local Union 542, full and free information should have been willingly given by Brother Underwood and his Committee, but the same was withheld. The refusal to explain fully about hiring outside pickets with the funds of Local Union 542; refusal to tell upon what basis the pickets were working or were paid; the refusal to give the amounts paid for pickets, since it involved only two checks written by Brother Underwood; the refusal to advise about the assessment placed against the members or about whether the By-laws had been regularly amended providing such assessments with the General President's approval; the refusal to tell about collecting assessments from permit men, etc.

These are but a few of the facts which were hidden behind the silence of Brother Underwood and which, coupled with his attitude on the question of defiance against the General President's order of August 11th as well as his policy of declaring strikes in 1950 and 1952 without the approval of the General President. That the attitude of Underwood and his officers in the preparing and filing this type of lawsuit before Judge Grim, involving as it did the reprehensible charges against the General Officers, all fairly well typify the independence which Brother Underwood and his officers have assumed for themselves and Local Union 542 of the International Union of Operating Engineers. It is apparent to me, Brother Underwood considers the International Union to be incidental and subservient to Local Union 542 and that under no circumstances will he follow the advice, ruling or request of the General President or the General Executive Board when it runs counter to his intentions.

It is apparent that he believes that affiliation with the Building and Construction Trades Council of Philadelphia or the Building and Construction Trades Department of the American Federation of Labor or the American Federation of Labor itself, are merely secondary bodies to be brushed off or resigned from as he decides at the moment.

He shows callous indifference to constitutional responsibilities, which is further borne out by his present attitude in that after filing his derogatory lawsuit against the General President and the General Officers and then later, after a court hearing thereon, he dismissed the lawsuit with prejudice, he still made no move to apologize or ask pardon of those whom he had so freely defamed and insulted. This was brought to his attention during the hearing before me, but he absolutely refused to say anything on the subject or to express any sorrow for his act.

As the presiding hearing officer of these proceedings in observing his manner and what he said and what he refused to say, it appears to me that he is one who has made up his mind not to go along with the International Union but intends operating a Local Union independent of any influence of the International Union or its General Officers or of the American Federation of Labor. I have come to this conclusion not from anyone particular thing he may have said, but from his general attitude during the hearing.

Respectfully submitted,

WILLIAM E. CARTER,
William E. Carter,
Hearing Officer.

EXHIBIT "B".

NOTE: Exhibit "B" (Constitution of the International Union of Operating Engineers) has been omitted here as it is same as Exhibit "D" of the Answer to Amended Complaint in Civil Action No. 14398 appearing at page 35b of this Appendix.

EXHIBIT "C"

IN THE MATTER OF THE APPEAL
SUPERVISION OF LOCAL UNION NO. 542

FIRST PARTIAL REPORT OF INTERIM HEARING BOARD

Now come the members of the Interim Hearing Board appointed in the above-entitled matter, and submit this first partial report of its proceedings.

On or about February 26, 1953, General President William E. Maloney issued the following appointment:

"Pursuant to discussion and reports before the General Executive Board at its meeting February 10, 1953 Miami, Florida, in connection with conditions surrounding Local Union #542, an interim Hearing Board is appointed, consisting of the following members:

1. Vice President Joseph J. Delaney, Chairman
2. Wm. E. Carter
3. Hunter P. Wharton

The Board will proceed to hear matters involving (a) economic conditions within the area of Local Union #542; (b) advisability of issuing additional charter or charters to members within the area; (c) problems connected with creating and adopting approved By-Laws for the government of Local #542; (d) other matters connected with the welfare of the membership in the area, including international Supervision, tenure, etc.

Any and all interested members are directed to communicate direct with the Chairman of the Interim

Board at 111 Eighth Avenue, Room 1567, New York, N. Y. for the time and place to submit requests or be heard and to do so as soon as possible. This Interim Hearing Board is desirous of completing its work as speedily as possible in order to report to the General Executive Board its findings and recommendations. Kindly see that this letter is posted on the Bulletin Board of Local #542. Your cooperation is requested.

Fraternally yours,

/s/ William E. Maloney
WM. E. MALONEY
GENERAL PRESIDENT

By order of General President Maloney, Brother S. A. Boston of Local Union #66, and Wm. Duffy of Local Union #825, were appointed alternate members of the Interim Hearing Board.

Pursuant to the foregoing appointment, your Interim Hearing Board arranged to organize and hold meetings for the discussion and adoption of procedures best fitted to carry out the purposes for which it was appointed. Following the organization meetings and discussion as outlined, your Interim Hearing Board decided upon a schedule of convened meetings available to the members of local union No. 542, and on or about the 11th day of June, 1953, your Interim Hearing Board arranged that all members of local union No. 542 be notified through the mails, which notification was as follows:

June 11, 1953

TO ALL MEMBERS OF LOCAL UNION NO. 542

Dear Sir and Brother:

The Interim Hearing Board appointed by General President Maloney, as provided by the enclosed notice to Local Union No. 542, has scheduled a series of hearings for the convenience of the members. The hearing schedule is as follows:

Wilkes-Barre, Pennsylvania—June 16, 17, 1953
Hotel Redington (See Bulletin board for room number)
Reading, Pennsylvania—June 18, 19, 1953
Reading Building Trades Hall, 211 8th Street, Room 203 and 204
Harrisburg, Pennsylvania—June 22, 23, 1953
Labor Temple, 1219 North 3rd Street
Philadelphia, Pennsylvania—June 24, 25, 26, 1953
Broadwood Hotel (See Bulletin Board for room number)
Wilmington, Delaware—June 29, 30, 1953
Carpenters' Hall, 1611 Pennsylvania Avenue

The subject matter before the hearing board is set forth in paragraph two of the enclosed letter.

For the convenience of the members desiring to be heard, the board will be in session on each day at 1:00 P. M. and remain in session until 5:30 P. M., and each evening beginning at 7:30 P. M. and remain in session until all members present have had an opportunity to be heard.

Your dues book will serve as your identification.

Fraternally yours,
s/ Joseph J. Delaney
JOSEPH J. DELANEY, Chairman
Interim Hearing Board

There was attached to the foregoing notice to the members of Local Union No. 542 a copy of the appointment issued by General President Maloney under date of February 26, 1953, as set forth first hereinabove.

With the preparation and printing and mailing of the foregoing notices, your Interim Hearing Board is reasonably assured that all members of Local Union No. 542 received ample and advance notice setting forth the date and place at which hearings would be conducted at Wilkes-

Barre, Reading, Harrisburg, Philadelphia and Wilmington and also apprized the members of the purpose of the hearings and of the subjects to be taken up thereat.

Your Interim Hearing Board began its hearings on June 16, 1953, and continued thereafter at the sessions indicated on the published schedule in the various cities. The sessions of the Interim Hearing Board continued daily between the hours of 1:30 P. M. and 5:30 P. M. and again in the evening at 7:30 P. M. until all present at the particular session were heard.

The Interim Hearing Board desires to report that at Wilkes-Barre, 145 members attended the hearings; at Reading, 132 members attended the hearings; at Harrisburg 43 members attended; at Philadelphia, 131 members attended the hearings, and at Wilmington, Delaware, 23 members attended the hearings.

It is worthy of note to find that in a great many instances members travelled great distances, often in excess of fifty miles in order to appear before the Interim Hearing Board and tell their story in connection with the conditions and administration of Local Union No. 542.

In addition to the appearances of members before the Interim Hearing Board in the various cities, your Interim Hearing Board reports that it is in receipt of many hundreds of individual letters from the members bearing on the subjects covered by the hearings, which were transmitted to the members of the Interim Hearing Board, growing out of the general notice which the Interim Hearing Board had issued to the membership as described hereinabove. Your Interim Hearing Board is in the process of reviewing these letters, which will be the subject of a later report.

Your Interim Hearing Board advises that in all cases the appearance of members at its sessions was purely voluntary and as a result of the general notice issued by the Interim Hearing Board.

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In addition to those members who appeared before the Hearing Board, there were many who were unable to be present, but who telephoned their views and otherwise contacted the Board members.

The schedule of hearings by the Board in the several cities of Pennsylvania was specifically designed for the dual purpose of bringing the Board into close and convenient access by the membership and permitting the members of the Hearing Board an opportunity to have an on-the-spot examination of conditions in the area. The Hearing Board notes that after the appeal of Local #542 against International Supervision was filed, that it was set for hearing at the meeting of the General Executive Board in Miami, Florida, in February of 1953, but that neither Underwood nor any member on his behalf appeared before the General Executive Board in support of the appeal. The Hearing Board further notes that at the time of the Miami meeting of the General Executive Board, a letter had been submitted at Underwood's request, claiming that the holding of hearings in Miami would cause undue hardship on the part of those appealing and demanding that hearings on the matter be conducted in Pennsylvania at a place convenient to the membership. Your Hearing Board is therefore somewhat surprised to learn that after its program of hearings in Pennsylvania had been adopted, and a notice sent to all members in Pennsylvania advising them of the date and place of hearings, that the entire membership of Local #542 had been served with mailed propaganda from the Underwood group in an effort to dissuade and discourage members from appearing before the Hearing Board. It appears that this mailed propaganda was timed to reach the membership in the scheduled areas approximately 48 hours before the hearings opened in the area. These tactics give one an idea of the inconsistency of the Underwood element in two characteristics:

Answer to Amended Complaint [in Civil Action No. 14547]—Exhibit "C"

1. By the refusal of the Underwood element to appear before the Executive Board at Miami in support of the pending appeal on the claim that the hearing was being conducted too far from Philadelphia and that the members could not attend thereat.

2. By the issuance of mail propaganda by the Underwood element to the members of Local #542 in an effort to prevent their testimony before the Hearing Board, after hearings were scheduled for the various localities in Pennsylvania. From all of this, the Hearing Board is inclined to the opinion that the Underwood element is evidencing bad faith in the matter of its appeal and are not sincere in prosecuting or supporting an appeal on behalf of #542 in the matter of supervision. As a matter of fact, however, it appears that the Underwood element is attempting to hold members up to scorn and ridicule for exercising their rights in appearing before the Hearing Board. This effort on the part of the Underwood element to block the hearing has apparently had very little effect on the members because it plainly appears that over 500 members have personally appeared at the scheduled hearings but only 5 members were found to be at all in sympathy with the aims and conduct of the Underwood element. This proportion seems to indicate the overwhelming trend of thought of the membership as being opposed to the aims and objects of the Underwood element.

CONDUCT OF HEARINGS

The method with which your Hearing Board conducted its sessions was designed to put members at ease and encourage them to tell in their own way their views on related matters. We were careful to advise all members that this was a committee for the purpose of affording the mem-

bership an opportunity of presenting comments, favorable or unfavorable, which might be helpful in guiding the operation of the local union. The members were encouraged to give their opinions on the manner in which the business of the local union was being handled. In addition to these general subjects, views were solicited on the advisability of creating separate local unions within the territory of Local #542, their views regarding the administration of supervision and the administration of business in Local Union #542, both before and after the current international supervision was invoked. Problems relating to the Welfare Funds were discussed. Views were solicited in respect to the maintenance of private clubs existing within the membership of Local #542 and of the possible harm created thereby. In addition to these and other general subjects discussed by members at the hearings and elsewhere, your Hearing Board had before it the history of Local Union #542 as shown by the records of proceedings, the administration of business, and court records.

The volume of data now before your Hearing Board, together with communications daily arriving before the Board require further time and study in relation to several matters connected therewith, consisting of

1. The subject of request for separate charters covering the territory of Local Union #542.

2. Matters connected with the pending litigation involving Local Union #542.

3. Problems connected with the administration of business in the Local #542 area.

4. Other incidental matters connected with the welfare of Local Union #542.

All of the foregoing will be made the subject of a further and final report by your Hearing Board as soon as possible and your Hearing Board intends to remain in session for the purpose of completing its work on such matters.

With reference to the other subjects before your Hearing Board upon which our investigation is as complete as we can possibly make it, we make the following statements and findings:

1. *Re Pending Appeal to Lift Supervision*

This matter was scheduled before the February meeting in 1953 and due notice was given to all interested parties to appear before the General Executive Board at such meeting in support of said appeal. No one appeared. The General Executive Board continued this matter and ordered that the Interim Hearing Board conduct hearings in the district of Pennsylvania. Hearings have been held in various cities and over 500 members have voluntarily appeared before the Interim Hearing Board. We find there is no popular or substantial support on behalf of the pending appeal. Only five members appeared in support of Underwood policies and all others appearing are practically unanimous, in the proportion of 100 to 1, in opposing a return to autonomy as it was administered by the Underwood faction. It therefore appears that the pending appeal to lift supervision is not being pressed. It is not sustained and should not be granted at this time. The record shows that International Supervision was imposed as a necessary emergency; that it put men back to work and ended the strike; that it healed our relations with the American Federation of Labor and the Building Trades Council of Philadelphia; that it promoted public good will; secured the negotiation of good contracts, amalgamated the Welfare Funds, and the record of the administration of business in Local Union #542 ...nce

International Supervision was imposed shows in many ways how the membership has been helped and how conditions have improved, and the record justifies the intervention of the General President in the premises.

2. *Operation of Internal Clubs*

It now appears, more clearly than ever, that the evil caused by internal clubs which have been formed by cliques existing within Local Union #542 is worse than ever. There is no doubt that these clubs are in existence and are formed for the main purpose of destroying the harmony within Local Union #542. These clubs are the spearheads of dissension and are actively fomenting rebellion by supporting litigation, holding meetings and issuing circulars to the membership. They were long ago ordered disbanded by the General Executive Board but the members of the clubs have flagrantly disobeyed such order. It is apparent that some action is fully justified and should be taken to eliminate these evils. These clubs are operating outside of the Constitution and contrary to the best interests of the membership of Local #542.

3. *Creation of Suitable By-Laws for Local Union #542*

From our review of the records of Local #542 it appears that this Local Union is without complete or duly authenticated By-Laws. Some effort appears to have been made several years ago for the establishment of By-Laws but the same were not finally approved as required by the Constitution. Later on, by motion in open meeting, Underwood endeavored to lengthen the term of elected officers without the approval of the General President and contrary to the form required. Subsequent to such action the officers were

elected and endeavored to hold office under a faulty system and in an unconstitutional manner. It appears that the membership generally throughout Local Union #542 desired district meetings in their local areas. Such meetings are provided for under the district form of government authorized by our Constitution. In the opinion of your Interim Hearing Board, it is now necessary that Local Union #542 formulate and adopt By-Laws in a legal manner. We believe that a By-Law convention of Local #542 should be held and that proposed By-Laws should be formulated and a referendum held thereon of the members of Local #542 wherein a basic and fundamental code for the government of Local Union #542 be adopted. In the opinion of your Interim Hearing Board such a procedure is not only necessary but it is a primary matter to be arranged for and settled, so that a code of By-Laws can be adopted and go into full force and effect, before any question regarding the lifting of International Supervision can be considered.

Experience has shown that it is impossible and impracticable to restore local autonomy in a Local Union which does not have a complete set of By-Laws governing its procedure and the administration of its business.

With the submission of the foregoing supplementary report your Interim Hearing Board herewith continues its efforts in behalf of Local Union #542 and will at the earliest possible date render its final report on the matters hereinabove referred to.

Respectfully submitted,

INTERIM HEARING BOARD
/s/ Joseph J. Delaney
Chairman
/s/ Hunter P. Wharton
/s/ S. A. Boston
/s/ Wm. Duffy

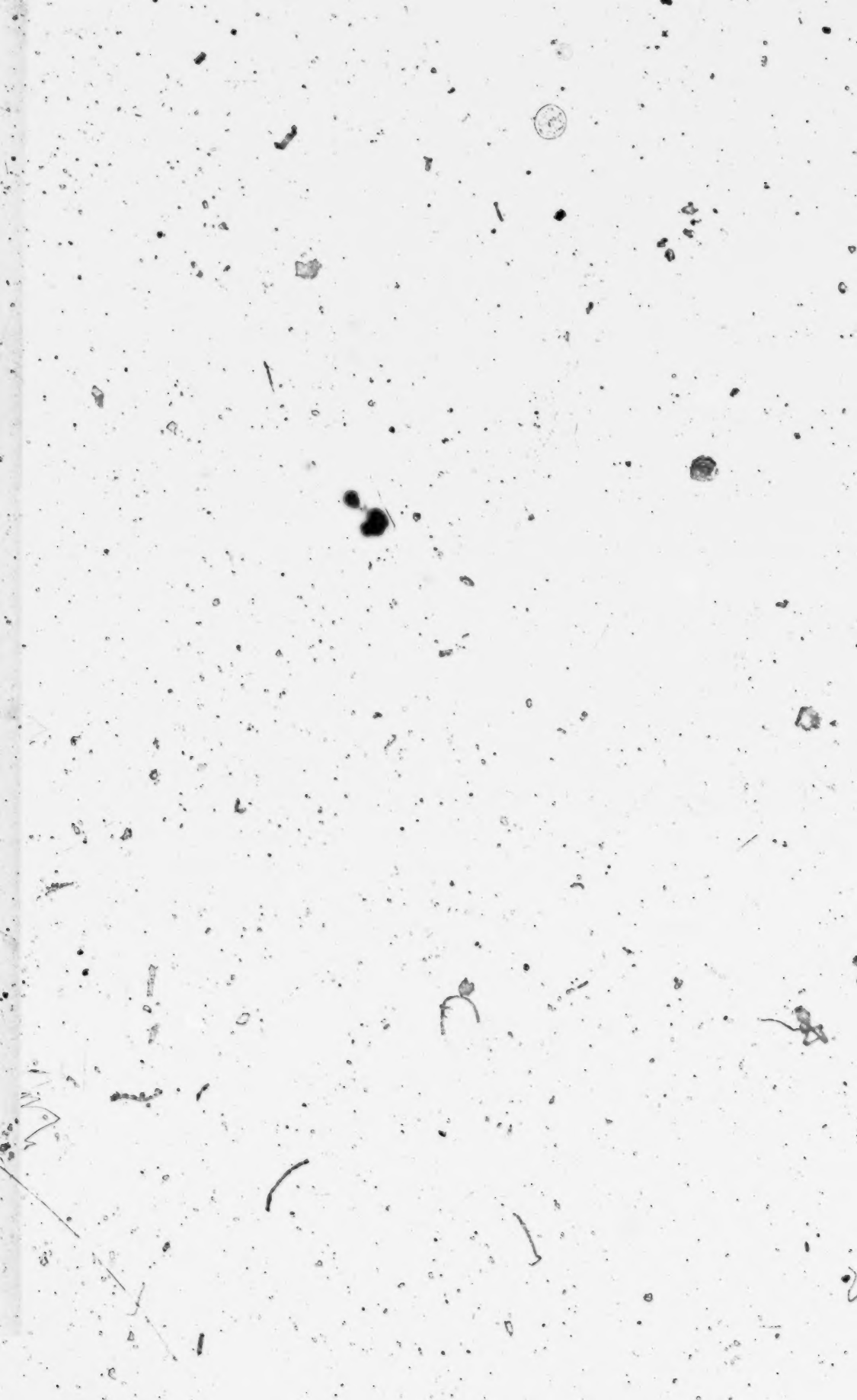

EXHIBIT "D"

APPLICATION FOR MEMBERSHIP

IN

Hoisting and Portable Local Union No.____

OF THE

INTERNATIONAL UNION OF OPERATING ENGINEERS

City _____ STATE _____

_____ 19____

GENTLEMEN: Having formed a favorable opinion of your Union, I hereby make application to become a member thereof and if accepted I agree as follows: That I will remain a member until expelled: that I will not violate any of the provisions of the Constitution, Rituals, By-Laws, Customs, Rules, or Mandates of the order; that I will not enter into or sign any individual contract of employment with any persons, firm or corporation, or any contract or agreement which provides for the withdrawal of my membership from this Union; I further agree in the event of a claimed grievance against the Union to faithfully observe the procedure of, and fully accept as final the findings of the Trial Boards within the order, and I hereby expressly waive any right to institute proceedings in any court of law or equity against the Union; I further agree to conform to and abide by all laws, rules and regulations and orders stipulated in the Constitution and By-Laws, or given by those in authority.

NAME _____ DATE OF BIRTH _____ YEAR _____

RESIDENCE _____ CITY _____ STATE _____

EMPLOYED BY _____ SOCIAL SECURITY NO. _____

I also agree to pay an entrance fee of $ _____ which shall include _____ dues in advance. I further agree that this entrance fee shall be fully paid by _____ 19____

Recording Secretary _____ Signature _____

Beneficiary NAME & RELATIONSHIP

Have you ever made application for membership to any Local Union of the I. U. of O. E.? { YES OR NO }

If so, where and what Local Union?

Have you ever been a member of any Local Union of the I. U. of O. E.? { YES OR NO }

If so, what Local Union?

City *State*

RECOMMENDED BY	APPROVED BY

Accepted by Local No. 19 ***Obligated in Local No.*** 19

Hoisting and Portable Local Union No.____

OBLIGATION REQUIRED FOR MEMBERSHIP IN THE INTERNATIONAL UNION OF OPERATING ENGINEERS

I do solemnly promise that I will, in accordance with the Constitution and General Laws and the Laws and Rules for Government of Local Unions of the International Union of Operating Engineers, remain a member until expelled or until I have been granted a withdrawal card in accordance with the provisions of said Constitution and Laws and Rules governing the same; that I will not violate any of the provisions of said Constitution, Laws, Rules, Rituals or of the Customs, or Mandates of this Local Union. That I will not enter either verbally or in writing into any individual contract or agreement of employment which contains any provisions looking to the withdrawal of my membership from this Local Union or of any other Local Union of said International Union of which I may hereafter become a member. I further promise, in the event of a claimed grievance by me against the Local Union or any other Local Union of which I may become a member, or against said International Union, that I will faithfully observe the procedure of, and fully accept the findings of, the Trial Boards and Appellate Tribunals set up within the Local Unions and said International Union. I further promise that I will not become a party to any suit at law or in equity against this Local Union or any other Local Union of which I may become a member or against said International Union, until I have exhausted all remedies allowed to me by said Constitution, Laws and Rules, before the tribunals of my Local Union and of said International Union, regardless of my opinion as to the fairness of justice which may be accorded to me by any or all such tribunals. I further promise to conform to and abide by said Constitution, Laws and Rules, and also all Regulations, Decisions and Orders provided for in said Constitution, General Laws and Rules, and as given by the officers in authority. I further promise that I will do all in my power to advance the interests of this Local Union and of said International Union and any and all of its duly affiliated and good standing Local Unions of which I may hereafter become a member. I further promise that I will never wrong a brother engineer who is a member of any Local Union, in good standing, of said International Union, or see him wronged if it is in my power to prevent it. I further promise that I will never divulge any of the secrets of this Local Union, or of any other Local Union of which I may become a member, to any person or persons who are not known to me to be members in good standing, and I further promise that I will at all times give union labor preference in filling any position of which I may have control, and to do all in my power to help a brother engineer who is a member of this Local Union or of any other Local Union of said International Union to procure employment; and that I will abide by any schedule of hours and wages and any and all working rules adopted by this Local Union or any other Local Union of which I may become a member or under whose jurisdiction I may work; to all of which I pledge my sacred honor as a man and engineer.

_____ _____

Witness Signature

Initiated by Local Union No. . . Date_____19_____

17 17

J-43885

Answer to Amended Complaint [in Civil Action No. 14547]—Exhibit "D"

PAYMENTS MADE BY APPLICANT

DATE PAID	PAYMENT ENTERED ON DAY BOOK PAGE NUMBER AND REMARKS	AMOUNT

TESTIMONY.

(454) FOURTH DAY.

Philadelphia, Pa., February 7, 1957.

Before: HON. THOMAS J. CLARY, J.

(454a) PRESENT:

FREEDMAN, LANDY & LORRY, by ABRAHAM E. FREEDMAN, Esq., for the plaintiffs.

MONTGOMERY, McCRACKEN, WALKER & RHOADS, by CHARLES A. WOLFE, Esq., for the defendants.

MYERS, McVEIGH, MANSFIELD & O'BRIEN, by CORNELIUS C. O'BRIEN, JR., Esq., for the defendants.

(83) ROY J. UNDERWOOD, having been duly sworn, was examined and testified as follows:

* * * * * * * * *

(98) MR. O'BRIEN: Also, Your Honor, this is a collective bargaining contract back in 1941, and I say to Your Honor that it is irrelevant, and we object to any testimony regarding it.

THE COURT: Let me give my reasons for letting in some of the background. We will have to view a lot of things in the light of reasonableness, so I am permitting it for that purpose.

MR. O'BRIEN: I take it, Your Honor, I have (99) a general objection to this line of testimony?

THE COURT: You have an objection to every bit of this line of questioning up until a point within reasonable distance of this—anything up, say, until 1948 or 1949. You have a standing objection to that, and also anything that is permitted will be assumed to be against your objection.

* * * * * * * * * *

(463) CROSS-EXAMINATION.

BY MR. WOLFE:

Q. Mr. Underwood, when did you become a member of Local 542?

A. Local 542 I first joined in 1937. I believe it was October of 1937. Prior to that I had joined Local 506.

Q. I show you a document and ask you first whether your signature appears upon it.

A. Yes, sir, that is my signature.

Q. Is your handwriting also on the reverse side of that document?

A. Yes, sir.

Q. Now will you tell us what that document is which you have identified?

A. This is an application for membership in the International Union of Operating Engineers, Local Union 542.

Q. Dated when?

A. Dated 10-12-37.

MR. WOLFE: I ask that the document identified by the witness be marked Defendants' Exhibit No. 1.

(Application for membership in the International Union of Operating Engineers, Local Union 542, dated 10-12-37, was marked Exhibit D-1 for identification.)

(464) BY MR. WOLFE:

Q. Will you read the document which you have identified, Mr. Underwood.

A. It is headed "Application for Membership, International Union of Operating Engineers, Affiliated with The American Federation of Labor, Local Union No. 542."

Space for city and state is not filled in.

10-12-37 appears as the date of application.

"Gentlemen:

"Having formed a favorable opinion of your Union, I hereby make application to become a member thereof and if accepted I agree as follows: That I will remain a member until expelled; that I will not violate any of the provisions of the Constitution, Rituals, By-Laws, Customs, Rules, or Mandates of the order; that I will not enter into or sign any individual contract of employment with any person, firm or corporation, or any contract or agreement which provides for the withdrawal of my membership from this Union; I further agree in the event of a claimed grievance against the Union to faithfully observe the procedure of, and fully accept as final the findings of the Trial Boards within the order, and I hereby expressly waive any right to institute proceedings in any court of (465) law or equity against the Union; I further agree to conform to and abide by all laws, rules, regulations and orders stipulated in the Constitution and By-Laws, or given by those in authority."

It is signed Roy J. Underwood, 1916 Wallace Street, employed B. M. Weiss.

Date of birth, April 29, 1905, City of Philadelphia, Pennsylvania.

Following this:

"I also agree to pay an entrance fee of $69 which shall include 3 month dues in advance. I further agree that this entrance fee shall be fully paid by . . ."

The date is blank. There is a place for signature of the recording secretary, but no signature appears.

My signature then appears, "Roy J. Underwood."

Q. The reverse side is merely the designation of a beneficiary, is it not?

A. Well, substantially, yes. There is other information or other questions asked, however.

Q. I show you another document, Mr. Underwood, and ask you to identify it. What is that?

A. This is a form of application used by the local union (466) for membership in the union.

MR. WOLFE: I ask that that document be marked as Defendants' Exhibit No. 2, please.

(Form of application used by the local union for membership in the union was marked Exhibit D-2 for identification.)

Q. I show you another document and ask you to identify it, please.

A. Well, this is a copy of the Constitution, International Union of Operating Engineers.

MR. WOLFE: I ask that that be marked as Defendants' Exhibit 3.

(Copy of the Constitution of the International Union of Operating Engineers was marked Exhibit D-3 for identification.)

(467) Q. Mr. Underwood, is that the Constitution of the International Union of Operating Engineers as it was after the amendment, after the amendments adopted at the 1952 quadrennial convention?

A. Yes, sir.

Q. Will you tell me what amendments were made to the Constitution at the 1952 convention?

A. Well, there was one amendment which provided that the supervisor of a union under supervision should hear

try and decide all cases arising within the local union and fix the penalty.

There was another provision which amended the provisions which previously appeared in the Constitution and still appears, which provided that no lawsuits could be filed against the International Union.

It was amended, however, and the provision was added to that, which provided that any member bringing an action against the International Union would be automatically fined the full cost of the defense of the International Union against the person bringing the action.

Q. Can you tell me which section, which article and section of the International Constitution was amended in that respect?

(468) A. I would have to locate it, sir.

Q. Would you look at Article XVII, Section 3, on page 67 and tell me whether that is the one?

A. Yes, sir, that is it.

Q. Will you read that section?

A. The amendment or the entire section, sir?

Q. The section as it is in the Constitution.

A. Very well, sir.

Q. As amended.

A. It is article XVII, Section 3, page 67.

"No suit or other action at law or equity shall be brought in any court by any member, officer or subdivision of the International Union of Operating Engineers until and unless all rights, remedies and provisions for hearing, trial and appeal within the Organization shall have been properly followed and exhausted by the member, officer or subdivision complaining. Any member violating this provision, shall, in addition to the penalties prescribed in the Constitution and ritual, be automatically fined the full amount of the costs incurred in the defense of any such action by the Union, together with such costs additional as the court may fix or assess against said member."

(469) Q. Now, is the section which you have just read as

amended in 1952, together with the other amendments that you referred to, all of the amendments that were made at the 1952 convention in this Constitution?

A. Yes, sir.

Q. You were a member of the Law Committee of International Operating Engineers prior to the 1952 convention, were you?

A. Yes, sir, I was appointed by Mr. Maloney.

Q. All of the amendments that were made to the Constitution at that convention were submitted to the Constitution for adoption and ratification by the Law Committee, were they not?

A. You said they were submitted to the Constitution?

Q. Were submitted to the convention by the Law Committee for adoption by the convention.

A. They were submitted with recommendations from the Law Committee, yes, sir.

Q. For the adoption of those amendments?

A. For the adoption or rejection, yes, sir.

Q. Did the committee recommend the rejection of the proposed amendments or the adoption?

A. Oh, yes, they recommended both. All amendments were submitted to the convention. The convention would then (470) act on the recommendations of the Law Committee.

Q. I am asking you about the Law Committee. Did the Law Committee submit to the convention with its recommendations the amendments to which you referred recommending that they be adopted?

A. Yes, sir.

Q. Mr. Underwood, you testified on February 4 in this case, and I am reading from page 90 of your transcript —

A. I am sorry, but I can't hear you too clearly.

Q. You testified on February 4 in this case, and I am reading from page 90 of the transcript, that you attended nearly all of the meetings of the Local from late 1937 to 1948, and that you knew of no one who was permitted to speak on the

floor without being threatened. Do you recall that testimony?

A. I recall something of that nature. I believe, however, I said that anyone was not permitted to speak who was not speaking in favor of something advocated by the supervisor or Mr. Carter.

Q. Did you have any official position with the Union during the period from 1937 to 1948?

A. Yes, sir.

Q. What was your official position?

(471) A. I was called in by Mr. White. I believe it was in ——

Q. Will you tell us first what your position was? Will you answer my question first? What official position did you have during that period?

A. I was a member of the Executive Board, and I would like to explain, if I may, why I became a member.

* * * * * * * * *

(472) Q. Now, what other official positions, if any, did you have during that period with Local 542?

A. Some time later I was appointed as a Trustee within, I think, two or three months, after my appointment to the Executive Board.

Q. Now, will you tell us what you wanted to say concerning your official positions that you held?

A. Yes, sir. I just wanted to give the circumstances surrounding my appointment. When we started the action about 1945, I would say the movement to obtain local autonomy for the union after that had been going on, for, oh, six or seven months, and Mr. White called me, the assistant supervisor of the union, and asked me if I would serve on the Executive Board, and I told him—I asked what his purpose was, and he said, "Well, I just want you to come in, and I want to talk to you." So I told him that I would.

Q. Can you tell us about when that occurred?

A. I am sorry. I just don't recall the dates of it now.

Q. You don't even remember the year?

A. Well, it could have been in maybe 1945, but I am not certain of it. It was a very brief experience.

In any event, I did accept the appointment (473) on the Executive Board, and I attended, I think, three meetings. I had some very vigorous difficulties with Mr. White during these meetings about conduct of the union and the conduct of the Executive Board, and I consequently resigned from the Board.

Q. When was that?

A. Well, it was after a few meetings of the Board. Now, it would be a very short time after I was appointed.

Q. How long a period would you say you were a member of the Executive Board of the Local?

A. Well, my best recollection would be at the most five months, I would say.

Q. When was it that you were a trustee of Local 542?

A. I believe that was following my appointment to the Executive Board.

Q. How long?

A. A short period of time. I don't remember how long it was.

Q. Was it a day or two?

A. Oh, no, it was a matter of weeks, I would say.

Q. A matter of a few weeks?

A. Well, weeks, or it could have been a month or longer, but I just don't recall that now.

(474) Q. How long did you continue to be a trustee of Local 542?

* * * * * * * * *

Q. How long did you continue to be a trustee of Local 542?

A. I can only guess, but recalling the number of times I was permitted to come in and look at any documents or

any property of the union and any of the bonds, I think that was two occasions, so it was—that again could have been a matter of a few months, possibly a little longer.

Q. Were you a trustee or a member of the Executive Board of the Local Union at the time or just prior to the election when you were elected as President?

A. Well, I resigned some time in 1947 as a trustee.

Q. You resigned as a trustee?

A. Yes, sir.

Q. Were you a trustee at the time Mr. McDonald first came to Philadelphia?

A. I don't believe so. However, I might have been.

(475) Q. Were you a member of the Executive Board at the time Mr. McDonald first came to Philadelphia?

A. No, sir. I am quite sure I wasn't.

Q. What were the duties of the trustee or trustees of Local 542?

A. During the period of supervision when I was a trustee?

Q. During the period when you were a trustee.

A. They had no duties, sir, and you were denied the right to look at anything, any property of the Local Union, or any evidence of the assets of the Local Union. That is why I resigned, sir.

Q. I thought you said a moment ago there were at least two occasions on which you had ——

A. Two occasions.

Q. What were those two occasions?

A. Two occasions when I insisted on being taken to the bank to see the bonds held by the Local Union, and that was all. I was never permitted to look at the records of the Union, financial records.

Q. Who took you to the bank?

A. Mr. White, the assistant supervisor. It was very carefully supervised.

Q. You saw the bonds in the safety deposit box, did you?

(476) A. I saw the bonds and attempted to take numbers

from the bonds, and they were snatched away from me, and he told me that would not be permitted.

Q. As far as you can recall those were the only services you ever performed as a trustee of Local 542; is that correct?

A. The only services I can recall I was able to perform.

Q. I didn't ask you that. As far as you can recall, did I understand you to say those were the only services you ever performed as a trustee of Local 542?

A. The only services I can recall, yes, sir.

Q. On the occasions to which you referred when you said Mr. White took you to the bank where the bonds were deposited in a safety deposit box, who else accompanied you?

A. I believe either Mr. Mogan or one of the other agents. I am not certain now. One drove the car, and Mr. White and I were in the car.

Q. Who were the officers of Local Union 542 when you first became a member, Mr. Underwood?

A. That was pretty much top secret. I never did determine who the officers were. We could only see who was acting or appearing to be acting.

Q. Did you ever see the minutes of the meetings of the (477) Executive Board or the membership meetings of Local 542 during that period?

A. At that time, no, sir.

Q. I don't care what time. Did you ever at any time see them?

A. I might have. I am just trying to recall now any time when I might have examined minutes.

Q. Well, whether you knew in 1937 or whether you acquired the knowledge later, can you tell me now who the officers of local Union 542 were when you became a member?

A. Why, Mr. Mogan was reputed to be the President of the Union, and I believe Mr. O'Brien, Mr. Pat O'Brien, I believe, preceded him, and he might have been in there when I joined as President of the Union. He was succeeded by Mr. Mogan when Mr. O'Brien died.

Q. You attended all of these meetings, I believe you said, of the membership of Local 542 from 1937 to 1948. Who conducted the meetings?

A. The meetings were opened by the President.

Q. Who was he?

A. Or the Acting President of the Local.

Q. Who was the President?

A. I believe Mr. O'Brien at the start, and then Mr. (478) O'Brien died shortly thereafter, and Mr. Mogan was appointed to succeed him, appointed by the supervisor.

As to who conducted the meetings, that is very difficult to say because the President or Mr. Mogan would open the meetings, but he would be constantly told what to do while he was on the rostrum.

Q. You attended all of those meetings, didn't you?

A. Virtually all of the meetings.

Q. Do the minutes of those meetings accurately reflect what took place during the meetings?

A. I have never read any minutes relating some of the things that I knew took place in those meetings.

Q. Mr. Underwood, during the period that you were President of this Local and were preparing to bring these lawsuits you mean to say you didn't examine the minutes that were in your office under your control during the period that is referred to as the period from 1937 to 1948? Didn't you examine those minutes?

A. All of the minutes, no, sir.

Q. You never read over those minutes?

A. Not all of them. I know of no reason to.

Q. Who was the Secretary of the Local who kept the minutes of these meetings?

(479) A. I believe Maurice Rudden was the Secretary for a number of years during International supervision.

Q. Was Otto Weidman the Secretary during a large part of this period?

A. Yes, I believe he was. Various people took minutes at the meetings, but Otto Weidman and Maurice Rudden were two that I remember distinctly taking minutes.

(480) Q. Now, you testified, as I have already said, at page 90 of your testimony, that during the period from 1937 to 1948 no one was permitted to speak on the floor without being threatened. You recall giving that testimony, do you not?

A. Yes, but I believe it was qualified by stating that they had to speak in favor of certain things advocated by the supervisor. In that event they were not threatened or they were not disturbed.

Q. Well, do you now mean to say that if anyone was allowed to speak at these meetings, he had to speak upon a subject that was favored by the supervisor?

A. That is substantially correct, yes, sir. If he got up and started talking about any other subject, a subject not favored by the supervisor, the president of the Union or the chairman of the meeting would be told to bang the gavel, tell him he is out of order and sit down. If he insisted on speaking, the men alongside of the hall would walk down and use threatening gestures or other efforts at the man to sit down. It happened to me many times, sir.

Q. So you frequently spoke at these meetings, did you?

A. I insisted on my right to speak at the meetings, yes, sir. I was shouted down many times, however.

(481) Q. And you were not intimidated, then, by the tactics that you described?

A. I was alarmed but not intimidated, I suppose. Not successfully, in any event.

Q. And you frequently spoke at these meetings, did you not, concerning what you considered to be misconduct of the affairs of the Local Union?

A. I did, sir.

Q. Now, again, Mr. Underwood, at page 105 of your testimony you testified, "Well, at the meetings, of course, members were not permitted to get on the floor to ask questions."

I take it again that you now qualify that statement; is that correct?

A. Well, I can tell you what I intended by it, yes, sir.

Q. What did you intend by it?

A. That they were not permitted to speak. A member could get on the floor, of course, physically he was on the floor, but they were not permitted to ask questions that were embarrassing to Mr. Fay or Mr. Carter or Mr. White.

Q. Although you frequently did it?

A. I said without being threatened, sir.

Q. Now, what in general took place at these meetings (482) that you attended if no one was allowed to talk?

A. Most of the talking was done, practically all of the talking was done, by Mr. Fay if he was there, by Mr. Carter when he was there, or by Mr. White or by some of the business agents.

When Mr. Fay was there, it was usually for the purpose of coming over and threatening members who had been causing some difficulty to Mr. White. He would stand up on the floor and spend a great deal of time stressing the importance of obeying that constitution and refraining from any criticism of Mr. White or the International Union. I have heard him make speeches that lasted, oh, twenty to thirty minutes at the Union meeting.

Mr. Carter, acting for Mr. Fay, would come over to the Union. There would be a hassle about buying new Cadillacs, and he would come over and say that he was over there to instruct Mr. White on behalf of Mr. Fay to purchase the Cadillacs, and that would go on, that hassle would go on, for some time.

I would get up and object to it and ask questions about it. There were a couple of other members who would. We would be threatened. Members were beaten because they insisted on asking questions.

Another time, when salaries were to be (483) increased, they would come over and take up the time of the meeting saying that they had letters here from Mr. Fay ordering the increase in salaries. The meetings generally, I mean, were very short unless they were over there for that purpose.

Q. And you would say that no business affecting the wel-

fare of the members of the Union was transacted at these meetings?

A. I certainly can't recall business affecting the welfare. I mean favorably affecting the welfare, of the members being transacted at those meetings.

Q. Now, at page 116 of your testimony, Mr. Underwood, you testified, "I can think of nothing actually that wasn't brought up on the floor at some time or other."

I take it that you meant by that testimony to state that anything that affected the members or the welfare of the Union was brought up on the floor of the meeting; is that correct?

* * * * * * * * *

(485) A. Yes, sir, that is correct. Everything was brought up over a period of time at meetings that I can recall.

Q. The minutes of the meetings to which we are referring note the presence of the officials of the Union who attended each meeting, do they not?

A. During that period, you mean, of supervision?

Q. Yes.

A. They should. However, I haven't examined all of the minutes, by any means.

Q. Have you ever examined any minutes of any meeting during that period which did not accurately state who was present among the officials, the officers, the trustees, the auditors, or any other official of the Union?

A. I can't tell you. I wasn't particularly looking for that in the minutes, if I did examine them. I wouldn't know of any reason to check back on that.

Q. You also testified, Mr. Underwood, at page 95 of the record of February 4, that the members of the Union were required to kick back—I think is the term you used—(486) 5 per cent of their wages each week. Do you recall that testimony?

A. Yes, sir.

Q. Was that in effect when you first became a member of Local 542?

A. When I testified I thought it had been. However, it was reduced to 3 per cent of their wages when I became a member. I have checked on it since and examined my dues book. However, it was a topic, a chief topic, of conversation among the members at that time.

Q. Did you make the contribution?

A. Yes, sir.

Q. To whom was this money paid?

A. It was paid into the supervisor's office.

Q. What do you mean by the supervisor's office?

A. Well, in the office maintained by the International Union.

Q. Well, did the supervisor have a separate office from the office of the Local 542?

A. I don't know. He did not. It was one room, and, of course, he had his space in the office.

Q. Well, did the supervisor have a separate secretary who would receive the money here himself rather than the secretary of the Local Union or the treasurer of the Local (487) Union?

A. No, sir.

Q. To whom was the money paid?

A. It was paid to whoever was in the office at the time accepting assessments.

Q. That is, in the office of Local Union 542?

A. Yes, sir.

Q. And was it paid in cash?

A. Well, I paid mine in cash. I don't know how all members paid it.

Q. Did you ever pay any directly to Mr. White or Mr. Fay?

A. No, I don't believe so.

Q. Who was the individual to whom you paid your 3 per cent?

A. At that time there was a Miss Bennett in the office.

Q. What was her job?

A. Well, her job was the office manager, I suppose. It was just one room.

Q. What do you mean, you suppose? Do you know whether or not it was?

A. No, sir, I do not.

Q. Who else was in the office?

A. She was the only one in the office outside of the assistant supervisor, Mr. White.

Q. You mean Mr. White was in the office most of the time?

(488) A. Yes, sir. Not most of the time, but on many occasions. I mean that is where he would normally be. He had his name on the door as supervisor.

Q. Who was Miss Bennett's successor?

A. I believe Miss Gallagher succeeded Miss Bennett.

Q. And Miss Gallagher continued in that position during the period that you were president, did she not?

A. Yes, sir, she did.

Q. Did some of the payments you made go to Miss Gallagher?

A. I don't recall any being paid to Miss Gallagher. It is entirely possible. It wasn't important as to whom it was being paid to at that time. It was just paid into the Union office.

Q. To whom were dues paid? To the Union?

A. They were paid at the same place to whoever received them in the office.

Q. Was this 3 per cent of the wages paid at the same time you paid your dues?

A. I can't say that that is true, no. I think that in many cases, I suppose, it was paid at the same time dues were paid. However, where it was the practice to pay dues in advance for three months, and you were required to make this payment into the office weekly, many times the assessment was paid and dues were not paid at the same time.

(489) Q. Incidentally, before I proceed any further on

this line, I would like to have you examine this document also and tell me what it is.

A. This is the ritual of the International Union of Operating Engineers.

MR. WOLFE. I ask that that document be marked for identification as Defendants' Exhibit No. 4.

(Ritual of the International Union of Operating Engineers was marked Exhibit D-4 for identification.)

BY MR. WOLFE:

Q. Was the ritual as contained in Defendants' Exhibit No. 4 in effect during the entire period that you have been a member of Local 542?

A. Oh, I don't know about that. I had never seen a ritual until 1948.

Q. Let me confine the question to that period. Are the contents of Exhibit D-4 the same as they were during the period 1948 to date?

A. It appears to be the same, yes. I would say that this is the same ritual.

Q. Mr. Underwood, you used the term, in connection with the subject I have been questioning you about, "kickback". How do you define the word "kickback", and what did you (490) mean by that term when you used it in your testimony?

A. Well, "kickback", it was regarded, of course, commonly then as a kickback, and a kickback, in my opinion, is any requirement that workingmen pay sums of money to anyone and get no accounting for it or no value received for it, and particularly in a Union such as ours. I might say that the only reason I ever heard was because they needed it, they said.

BY MR. FREEDMAN:

Q. What?

A. The only reason they ever gave for it was because they needed it.

BY MR. WOLFE:

Q. Is there anything unusual about a Union collecting money from its members by assessment, whether you call it assessment or kickback?

A. Yes, I would say it is unusual. It would only be done under unusual circumstances.

Q. Will you explain that to me, please. What is the difference in your mind?

A. Well, if a Union was faced with an emergency situation or something requiring unusual expenditures over a short period of time, I think it would be quite proper and usual for the membership to adopt an assessment program. (491) a limited assessment program, but I think the membership should adopt it, sir.

Q. And based upon a percentage of wages?

A. That would depend entirely upon what the membership wanted to do under the circumstances.

Q. In other words, you would regard it as improper to impose an assessment or kickback or whatever you want to call it upon the membership unless the membership agreed to it?

A. Yes, sir.

Q. Did you ever do that, Mr. Underwood? Did you ever impose an assessment or kickback on the membership of this Union?

A. Absolutely not. The only time any assessment was levied against the membership was by a vote of the membership at a regular meeting, where it was urged by Mr. John McDonald, the International vice-president, and it was to create a fund for the purpose of paying our membership picket expenses during the course of our strike, and that was for a three-months' period. That was the only occasion.

Q. Mr. Underwood, who is Nathan Unruh?

A. Nathan Unruh is a member of the Executive Board of the Local Union.

Q. Has he ever collected money from members and turned (492) it over to you?

A. No, sir.

Q. He never has?

A. No, sir, not to my knowledge.

Q. Well, now, if he had, would it be possible that he could have turned money over to you without you knowing about it?

A. I am talking about collecting money now.

Q. I am asking you whether Mr. Unruh ever collected money from members of Local 542 and turned it over to you.

A. I will answer no to that question, but I will qualify it, if you like.

Q. Or to someone on your behalf?

A. I can only say this, that money has come to me since supervision was imposed ——

* * * * * * * * *

(497) Q. During the period 1937 to 1948, were there auditors of Local 542?

A. I am not sure that I understood the years you referred to there.

Q. I am talking about the period from 1937 to 1948.

A. To 1948?

I believe when I was trustee I saw an auditor's report. That was probably in 1945 or 1946—or rather, 1946 to 1947.

Q. But it is your recollection that you saw only one auditor's report during that period?

A. No, I believe I saw it on two, probably two occasions.

Q. Might there have been three or four or five?

A. No, sir, no, sir. There was one or two occasions when I was not permitted to look at the auditor's report. It was

brought into the room. However, when I started to examine it, Mr. White would take it away and say, "You have seen enough of it."

Q. Do you know who the auditor was?

A. No, sir, I do not.

Q. Did you take part in the negotiation of any contracts, collective bargaining contracts, during the period from (498) 1937 to 1948?

A. No, sir, I did not. I recall one day I was in front of the Union Hall with several other men, and just prior to that I had discussed with Mr. White in a taproom, where he normally held forth when he was not in the office up at Ridge—Broad and Ridge—the contracts of the Union. I was asking him then why they would never submit to the membership contracts for approval or rejection or even the demands that were to be made.

The following day I was standing front of the Union Hall and he asked me if I wanted to go with him to some contract negotiations.

I did go with him over to the—one of the buildings in town, I don't recall now which one it was, and we were there for about ten or fifteen minutes. I simply sat in, and that was the extent of any negotiations I ever attended. I certainly didn't participate in any way.

Q. Why did you not participate?

A. Why, because they didn't bring up any contract demands. There was just a question they were discussing as to whether a certain contract should apply to an (499) asphalt company in town, I believe.

In fact, the lawyer was there for the International Union and they were just discussing this question as to whether it should apply, and they discussed it probably ten or fifteen minutes, and the meeting broke up. I heard nothing discussed about the contract itself or the terms and conditions.

Q. Who made disbursements of Union funds during this period 1937 to 1948? Who paid the bills?

A. Well, I suppose the assistant supervisor. I don't know

who actually paid the bills. He had to sign the checks, I understand.

Q. What do you mean by the statement you understand he had to sign the checks?

A. I understand that when a Local is under International supervision the supervisor probably and assistant supervisor sign the checks. We understood that. I don't know. I didn't see them.

Q. On what is your understanding based?

A. On rumors and impressions gained by certain statements that were made, I suppose, from time to time, outside meetings and in meetings.

Q. You never saw any checks during this period drawn upon funds of the Local Union that were signed by the (500) officers of the Local Union?

A. I don't recall seeing any, no, sir.

May I say, except that after autonomy was given to the Local Union by the courts, I believe I did see some checks, but I wasn't examining for that purpose, but as I recall now, we only saw a few checks.

Q. You never looked at any of the cancelled checks for the previous years after you became an officer of Local 542; is that what you intend to say?

A. I have a recollection of the accountant being in there and going through checks, and I came in, I believe, while he was going through them, and I might have looked with him at a few checks, but I made no examination, thorough examination, of them.

Q. Now, you testified, Mr. Underwood, that beginning some time in 1948 you and two or three others tried to change conditions in the Local. Do you recall that testimony?

A. Beginning prior to 1948, no,—beginning in 1948—oh, I am sorry.

Q. Since 1945 or 1946.

Let me quote you specifically. I am reading from page 118 of the transcript. You said:

(501) "Well, it began actually in about 1945, I would say, when two or three of us decided to try to do something about the situation—" and so forth.

Do you recall that testimony?

A. Yes, sir.

Q. What conditions did you try to change, Mr. Underwood?

A. We wanted to eliminate the beatings of members at Union meetings and the cracked heads on more than one occasion.

We wanted the election, an election of officers of the Union.

We wanted an accounting of the hundreds of thousands of dollars which we were certain were collected in permit fees by the International Union.

We wanted to give applicants for membership the right to join a union, who were qualified engineers.

We wanted to eliminate the requirement that members of the Union, A and B branches, pay to the International a fee of $2.50 a week for the right to operate equipment for which they were fully qualified, and we wanted an accounting—well, I mentioned that.

(502) We wanted the right restored to the membership of the Union to participate in the management of their affairs and to have a voice in the administration of the Local Union.

We wanted to eliminate business agents who were brought in from industries where they had no familiarity whatever with the operation of the Union and given Cadillac automobiles and sent around the territory.

We wanted the right to have some control and voice over things of that sort.

We wanted the right of members to go out and get jobs and be assigned to jobs without interference and not be kept on the bench for several months at a time. We wanted to eliminate all of these conditions.

We wanted to eliminate control by a man like Joey Fay

and William Carter and Jasper White. We wanted some semblance of democracy in the Union.

Q. Over how long a period were you trying to obtain signatures to carry out the program that you referred to?

A. I suppose for about, oh, over a year or longer.

Q. During the period of about a year you were able to obtain approximately 100 signatures of members of the Union who were willing to sponsor the kind of changes that (503) you referred to?

A. Approximately that throughout the entire jurisdiction of the Union, yes, sir.

Q. During the period from 1937 to 1947 did you ever run for President of the Local?

A. In 1947 or 1946—I don't recall now—they announced they were going to have an election in the Local Union, and it wasn't generally known. However, I got word of it, and I filed my intention to be a candidate for the office of President of the Union.

However, I was notified thereafter I was ineligible because I had been behind in my dues, I think three or four days, during one of the twelve months preceding this election that had been set up by the supervisor.

Q. Who nominated you as President, as a candidate for the presidency?

A. Gee, I don't recall now. It wasn't taken very seriously, sir, at the time because this was an election to be conducted by the supervisor, and that is the way it was conducted, too.

Q. Is that the only time that you were a candidate for office during that period of approximately ten years?

A. Yes, sir, the only time I recall.

(504) Q. Now, during this period of time when you and two or three others—incidentally, who were the two or three other people who were working with you to change conditions in the Local?

A. Well, it is rather difficult to say as to just who starts a thing like this. You talk to one person and then another, and then finally one becomes interested, but I remember

Tom McDermott at that time became interested, and as the thing went along, other ones would come in; another one here, another one there, until finally you were getting together a corps to work for.

Q. That was not my question, Mr. Underwood.

I asked you to designate the two or three people who you said on page 118 of the testimony worked with you to obtain these changes. Now, do you mean to say that you don't know now the two or three members of the Union who, together with you, tried to accomplish what you have described?

A. I am sorry. I thought you said who started it.

Q. That is what I do mean.

A. That is what ——

Q. I will quote that testimony again from page 118.

You said, "It began actually in about (505) 1945, I would say, when two or three of us decided to do something about the situation."

I want to know who those two or three were.

A. Well, Edward Nicoletti was one. Ray Dawson was another. I believe Edward McIntyre was also interested and as the thing went along, I mean others came in.

Q. What was the last man's name that you mention McIntyre?

A. McIntyre, yes, sir.

Q. What was his first name?

A. I think it was Edward.

Q. Now, at any time during the period that you were working with the other people you have mentioned and trying to effect a change in the conditions of the Local, did you ever contact Mr. Maloney or any other of the officials of the International, general officials of the International, to discuss the problem with them?

A. I didn't personally. He was only contacted after the action was filed in 1946. I got many reports from people that said they tried to contact Mr. Maloney.

Q. Was there any application made at any time during

this ten-year period from 1937 to 1948 to the general officers of the International Union to lift supervision?

A. Well, Mr. Fay was the general officer. He was (505a) an International Vice-President, and he was the fellow conducting the activities of these people in here. Certainly if he had knowledge of it, and we could appeal to him, and we did that constantly, to correct these conditions, the brutality, in the Union.

(506) Q. I asked you, Mr. Underwood, whether any appeal was made to the general officers of the International Union to lift supervision.

A. Only to Mr. Fay, to my knowledg.

Q. What is that knowledge based upon?

A. I made that personally, of course.

Q. When was that?

A. At meetings of the union. That's what we were fighting for.

Q. When did you make it?

A. At meetings of the local union.

Q. In what year?

A. Oh, over a long period of time, I would say.

Q. You mean you made such a request from the floor of the meeting?

A. Certainly. We wanted autonomy. We wanted the right to govern ourselves. Those are the requests that were made up until the time Mr. Fay stopped coming in here, and, of course, they continued even while it was under supervision.

Q. How often would you say that you saw Mr. Fay at any of the meetings during this period of time?

A. All together, you mean, at the meetings?

Q. Yes.

A. At all of the meetings?

(507) Q. I am talking about the meetings.

A. Meetings from 1937 to 1948?

Q. Yes.

A. Between 1937 and 1945 or nearly 1946 I guess I saw him, oh, 25 or 30 times.

Q. Present at meetings of Local 542?

A. Yes, sir, and then I have seen him, of course, at the office of the local union, going into the office and coming out of the office.

Q. In the action which was instituted by—well, at least in the names of McDermott, Dawson, and Nicoletti—in the Court of Common Pleas No. 2 in 1946 there are included among the defendants named in that action, the then existing officers of Local 542, are there not? I show you Exhibit P-3 and ask you whether that is a fact, and if so, will you kindly read to me the names of the defendants in that action who were officers of Local 542.

A. These were purported to be at that time, sir, officers—

Q. I didn't ask you that.

A. You did ask me.

Q. I asked you what the document before you shows were the defendants in that case as officers of Local 542.

A. This shows the officers as they were purported to be to us at that time, yes, sir.

(508) Q. Will you read them, please.

A. Yes, sir.

The International Union of Operating Engineers, William E. Maloney, General President.

Q. I asked you to read the names of the defendants in that case who are named as officers of Local 542. Do you understand what the question is?

A. I do now, sir, yes, sir. I thought you wanted all the officers read in the caption.

The name of Jasper H. White appears as Assistant Supervisor and Business Manager. Is that an officer of Local 542 or not, sir? I don't know.

* * * * * * *

(510) Q. Now, Mr. Underwood, Jasper White did not welcome Mr. Maloney's representative Mr. McDonald when he came to Philadelphia in 1947, did he?

A. I heard stories to that effect.

Q. Were you present in March 1947 when White threatened Mr. McDonald, told him to get out of town?

A. No, I wasn't present.

Q. You testified on February 5 in this case, Mr. Underwood—and I am reading from page 155 of the record—that when you became president of the union you found no letters, no memoranda of any kind, between the union and other parties, particularly the contractors with whom they had been negotiating for several years. "I found no records indicating even who the contractors were that they had been negotiating with * * *."

Do you recall that testimony?

A. Yes, sir.

(511) Q. Did you mean by that testimony that you didn't know what contracts were in existence between the union and the contractors at the time you became president?

A. We knew there was a contract, yes, in existence between the contractor associations. However, we had no list and could find no list of the contractors who were members of those associations, in order to ascertain how many contractors were covered.

Q. Well, you mean by that testimony, then, I take it, not that there were no copies of existing contracts in the office of the local at the time you took over, but that you had no list of the members of the contractors associations in the Philadelphia area; is that what you meant?

A. There were copies of two or three contracts, I believe, one with the Liberty Corporation, one with the Warner Company, I believe, and one with the contractor associations, but we had no lists of any members of those associations, that's right.

Q. You were business agent of the local at this time, were you not?

A. I was the President and Business Manager.

Q. I mean just prior to your becoming President. Were you a business agent of the local prior to your becoming President?

A. No, sir.

(512) Q. Had you ever been a business agent of the local prior to your becoming President?

A. No, sir.

Q. When was the death benefit fund begun in Local 542, Mr. Underwood?

A. In 1947, while Mr. McDonald was the Supervisor.

Q. So that not more than a year had elapsed between the establishment of the fund and the date when you took over the local as President?

A. I don't think it was any longer period than a year.

Q. Was it less than a year?

A. It very probably was, but I don't recall the exact date it was established now.

Q. What was the balance in the death benefit fund at the time you became President, approximately?

A. I don't know, because, as I recall, the death benefit fund was in with the general treasury of the local union at the time. That was one thing, of course, that we wanted to separate and keep separated, and that was worked out by Miss Gallagher in the office and the accountant, I believe.

Q. You have no recollection as to the amount of the death benefit fund when you took over?

A. It wasn't a high figure. It might have been, oh, 10 or 12 thousand dollars, something like that. I don't recall the (513) exact amount now.

Q. And what were the contributions to the death benefit fund and who made them?

A. The contributions were 50 cents per month per member.

Q. Six dollars a year?

A. Yes, sir.

Q. And the fund had been in existence for a year or less than a year when you took over, and there was a balance of, say, between 10 and 12 thousand dollars in it?

A. That's my best recollection. I don't recall the figure at all. I just recall it was something within that area.

Q. And how many members of the local were there at that time, approximately?

A. Approximately 2000, I believe.

Q. Of Local 542?

A. Local 542 and the branches.

Q. Did the branch members belong to the death benefit fund?

A. Yes, sir, all except members of the C Branch. They did not.

Q. Approximately how many members were there in Local 542 in A and B at the time that you took over?

A. Well, before the transfers were effected, after we took over, of B Branch members into the parent body, those qualified (514) members, I believe there was about, oh, 300, 350, in the parent body, and about an equal number in the A Branch, apprentice engineers, and then the balance of, oh, 8 or 9 hundred were in the B Branch. That is the best recollection I have of the figures, now.

Q. Were the members in the A Branch and the B Branch required to contribute to the fund?

A. Yes, sir.

Q. Or was it optional?

A. No, they were required by action of the membership of the union.

Q. What was the amount in the treasury of the local at the time you took over?

A. I believe, excluding the amount of the death benefit fund, which was included with the treasury, I believe it was between 20 and 25 thousand dollars.

Q. You mean that that was the cash balance, or how do you define "treasury"?

A. Well, the cash, the cash balance, yes.

Q. That is, there was on hand in cash or in banks about $25,000?

A. In the neighborhood of it, yes, 20 to 25 thousand, I believe.

Q. That did not include other assets, then? You are not

(514a) including in your treasury other assets of the union, such as automobiles and any other assets it may have had?

A. No, sir.

(515) Q. Or bonds; you are not including bonds, either, in that designation?

A. No, sir.

Q. And what did you testify the other day was the amount of money in the treasury in August of 1952 when you left?

A. I didn't testify, I don't believe, that any stated amount was in the treasury on August 19, 1952.

Q. Now, I call your attention to this testimony on page 158 of the record.

You were asked:

"What about the Death Benefit Fund? How much was in it when you first took it over?"

And you said:

"I believe there was about, oh, seven or eight thousand dollars in it when we took over. It was over $100,000, well over $100,000, I believe, in 1952."

And then you were asked:

"What about the treasury of the Union?"

And you said:

"The treasury was built up from about twenty, between twenty and twenty-five thousand (516) to over a hundred thousand dollars."

Did you mean by that testimony that when you left the Union as President in August of 1952 that there was over $100,000 in the treasury of the Local Union?

A. No, there was not $100,000 in the treasury at that time. However, there was due the treasury money to be collected from these assessments which was to be returned to the treasury, which would have brought the treasury up to $100,000. If I may explain that, I would like to.

Q. I would be very glad to hear your explanation.

A. Very well.

Q. I would be glad to hear an explanation in answer to

this question, "What about the treasury of the Union?" That was the question you were answering. Do you have some further explanation you want to make?

A. Yes, sir, yes, sir. This is what I had in mind. When the strike started and the decision was made by the Board and the membership to pay strike benefits to the pickets, of course no fund had been established at that time. No money had gone into the fund as a result of the action taken by the membership to pay assessments (517) into a fund for the purpose of paying the pickets.

Therefore, the Board had recommended, and the membership approved, that pickets be paid from the treasury of the Local Union until such time as the fund had been built up to the point where it could take over these obligations, and that the treasury was to be reimbursed later on for any monies taken from the treasury to pay the pickets.

Q. Now, you said no money had been received from the assessments "up to that time". What do you mean, and what are you referring to by the phrase "up to that time"?

A. Well, in June of 1952 I believe the pickets—they started to pay the pickets in June of 1952. That is my best recollection now, and the assessments were levied for June, July and August.

Q. You mean that no assessments came in prior to August of 1952?

A. Sir?

Q. Did you mean to say that no assessments had been received or collected prior to August of 1952?

A. Oh, yes, certainly.

THE COURT: Did you mean to say they had (518) been or had not been? Let's get that straight.

THE WITNESS: Oh, assessments had come in, yes, sir, prior to August of 1952, but the strike was still going on, and it was determined that the final amount due the treasury as the assessments accumulated would then be put into the treasury of the Local Union.

BY MR. WOLFE:

Q. What was the amount of those assessments?

A. They were $20 a month for those operating the principal equipment, that is, the higher-paid equipment members of Local 542, and also members of the B Local.

I believe it was $10 a month for the three-month period for oilers and firemen, members of the A branch.

Q. How many members of the Union were there at the time that assessment was imposed?

A. Between 3,800 and 4,000, I would say.

Q. How was that assessment determined, decided upon; when and where and by whom?

A. At a meeting of the Local Union when Mr. McDonald got up and advised the membership that that would be an appropriate way and an effective way to carry on the strike so that no hardship was suffered by any of the (519) members.

Q. How many were in attendance at that meeting?

A. Oh, I don't recall the number now that might have been in attendance. Our meetings averaged about 350 or 400 members at meetings, and there might have been 1000 at that meeting. We have had attendance at meetings up to 3000.

Q. You have no recollection as to the number who were in attendance at the meeting at which this assessment was determined upon?

A. No, sir. I can't recall now.

Q. What was done with respect to any member who failed to pay the assessment?

A. I don't know that any action was taken up to the time supervision was imposed on the Union. I think it was —

Q. I am asking you about the period during your regime. What action was taken by you or during the period that you were President?

A. I just said up until the time supervision was imposed upon the Local Union I don't recall any action being taken.

against the members. There was no desire to create any hardship on members either who were required to pay (520) this by action of the Union.

Q. I didn't ask you that ——

A. But if they were delinquent ——

MR. WOLFE: If Your Honor please, I ask that the answer which has been volunteered by the witness be stricken.

THE COURT: It may be.

Read the question again.

(Question read.)

THE WITNESS: I don't recall any action taken where there were delinquencies in payment of the assessment, except on occasions, perhaps, when dues were paid, and when the members' dues were paid they probably would be required to make payment of the assessments.

BY MR. WOLFE:

Q. How would it be required?

A. I don't remember an instance ever coming up in connection with that. I think the assessments were paid voluntarily, and I just don't recall that the question ever arose.

Q. Then what did you have in mind by that answer?

I wonder if the reporter will read to me (521) again his answer with respect to the payment of assessments when dues were paid.

(Answer read as follows:)

"I don't recall any action taken where there were delinquencies in payment of the assessment, except on occasions, perhaps, when dues were paid, and when the

members' dues were paid they probably would be required to make payment of the assessments."

BY MR. WOLFE:

Q. I am asking you what kind of action was taken to which you referred in that answer.

A. I don't know of any action being taken, except that it is a rule in the Union that where assessments are levied by action of the membership those assessments must be paid when due, or no dues can be accepted, and that probably was followed.

Q. So that if a member came to the Union office or otherwise sought to pay his Union dues and he had not paid the assessments his dues would not be accepted, and he was, therefore, a delinquent, was he not?

A. That would be my understanding of it, yes, sir.

Q. Subject to discipline by the Union, or expulsion or (522) suspension?

A. I would say yes, where the assessment had been levied by the membership.

Q. Now, I will read you again, Mr. Underwood, the answer you gave at page 158 of the transcript with respect to the manner in which you built up the treasury of this Union during your regime from 25,000 to over $100,000.

First of all, will you tell me just how you arrived at that figure of over $100,000 as the amount in the treasury at the time you left? What did you include?

A. That was not the amount in the treasury at the time supervision was imposed on the Local.

Q. Then what did you mean by this answer, which again I quote:

"The treasury was built up from about twenty, between twenty and twenty-five thousand to over a hundred thousand dollars."

What did you mean by that?

MR. FREEDMAN: It doesn't say at the time he left. I think it ought to be cleared up.

BY MR. WOLFE:

Q. The answer which you had just previously given with
(523) respect to the Death Benefit Fund covered the period up until 1952. Did you have any other date in mind than August of 1952?

A. I intended by that answer to convey that the money in the treasury and money due, plus money due the treasury from these assessments as they came in in sufficient amounts to reimburse the treasury, would have amounted to over $100,000.

Q. So that when you said you had built it up from 25,000 to over $100,000, you meant that it would be over $100,000 when all of the monies that had been assessed against the members were paid; is that correct?

A. I meant the treasury had been built up to over $100,000, and then, of course, it was used for the payment of pickets pending receipt of sufficient monies from the assessment to reimburse the treasury, yes, sir.

Q. How much cash actually was there in the treasury at the time your regime ended?

A. Well, the actual cash at that time was, I believe, about $15,000.

Q. You received a report, did you not, an audit report, which showed cash on hand, and so on?

A. Very probably did. I don't recall it at the moment,
(524) but I must have gotten the figure from that. In addition, of course, there were bonds belonging to the treasury of the Union.

Q. Well, now, I ask again when you used the word "treasury" and when you used that term in your testimony, did you or did you not include bonds?

A. I very probably did, yes. Bonds are purchased from time to time from the treasury.

Q. Now, Mr. Underwood, you have told us ten or fifteen minutes ago that you did not include bonds. Now, which is correct?

MR. FREEDMAN: Wait a minute. You are talking about two different things. You are talking about ——

THE COURT: Wait a minute. Let's get something straight, Mr. Freedman, and this goes for both sides. If you have an objection to the question, make it to the Court. Don't make a speech to the other lawyer.

MR. FREEDMAN: I am sorry, sir. I object to the question, Your Honor.

THE COURT: Objection overruled. Read the question.

(Question read.)

A. You are undoubtedly referring to the answer I gave regarding the treasury in 1948 when I referred to the (525) treasury then and the amount in the treasury.

BY MR. WOLFE:

Q. That is correct.
A. Yes.

BY THE COURT:

Q. You referred to the cash amount at that time?
A. Yes, sir.
Q. That is what you told us?
A. Yes, sir.
Q. First of all, you excluded the bonds. You did not take into account the personal-property assets of the Union there.

You are just talking about money in banks. You had about $8,000 or so of death benefits, and about $20,000 or $25,000 of cash in the treasury, plus bonds, plus personal property when you assumed control; is that right?

A. I did not include the bonds. It was only the cash on hand.

Q. But you did testify that there were bonds in the bank deposit vault that belonged to the Union. I certainly understood that, I hope.

A. Yes, sir, that was my understanding.

Q. Well, I say your entire assets then, as you outlined (526) them, were as follows, and correct me if I am wrong. The personal property, desks, automobiles, supplies, and whatever you have in the Union.

In addition you had the bank account of which $8,000 or thereabouts was assigned to the death benefits, and about $20,000 or $25,000 of general funds; right?

A. Yes, sir.

Q. And over and above that there were bonds in the name of the Union deposited in the safety deposit vault?

A. Yes, sir.

Q. Generally that is what you took over with the books and records?

A. Yes, sir.

THE COURT: All right.

Now you may go on with your questioning from there.

BY MR. WOLFE:

Q. And the $100,000 which you said in the quotation from your testimony which I have already referred to was in the treasury did not include bonds?

A. I believe it did include bonds, but ——

THE COURT: You believe it did or did not?

(527) THE WITNESS: I believe it did. However, still am not certain about that, but I believe it did.

* * * * * * *

BY MR. WOLFE:

Q. Mr. Underwood, when Mr. McDonald came to Philadelphia, you testified at page 161 of the record that after he came to Philadelphia he was in the office practically every day—let me read it to you. You were asked this question by Mr. Freedman:

"Q. Mr. Underwood, are you able to state from your personal knowledge whether Mr. McDonald was kept advised of all the activities in the Local Union?"

And you said:

"Yes, sir, he was."

Then you were asked:

"Did he travel with you from place to place in connection with your business?"

And your answer was:

(528) "Yes, sir, virtually every time it was necessary to go out of town on business, and, of course, he was in the office practically every day, and we discussed matters in the office. Mr. McDonald was there."

And then you were asked:

"And did he advise and guide you?"

And you answered:

"Yes, sir, he did."

Do you remember that testimony?

A. Yes, sir.

Q. How long after Mr. McDonald came to Philadelphia did you rent a private office distinct from the office of Local 542?

A. How long? How long after he came to Philadelphia did I rent a private office?

THE COURT: Read the question to him again, and read it slowly.

(Question read.)

A. (Continuing.) The only office that I had anything to do with renting was the office after supervision was imposed on the Local Union in August, 1952, which was financed by the members of the Union who were making (529) contributions into a fund.

* * * * * * * * *

Q. Was there any time, Mr. Underwood, when you moved your papers and your desk and your secretary and switchboard and a lot of other things to a private office distinct from the office, the general office, of Local 542?

A. No, sir. We had offices in the 201 North Broad Street Building. We then engaged office space in the City Center Building, 121 City Center Building, and only because we couldn't get adjoining offices and center all (530) of the office activities in that one area we had to rent three spaces at the end of the hall, and in there were my secretary, the switchboard, another girl who did typing and clerical work. It was just a part of the office. It wasn't certainly a private office for me. I had my office in there, yes.

I would like to amend that. It just occurs to me now that at first we did go into offices at the end of the building with the understanding that we were to get the adjacent offices just as soon as they were vacated. However, they were not vacated, and we had to have expanded facilities, office facilities, and we did take over offices down at the far end of the hall. I recall that now.

Q. When you say "we" who do you include in the term "we"?

A. Well, the Union, of course.

Q. Did anyone use that office other than you and your secretary, your two secretaries?

A. I did not have two secretaries. Myself, my secretary and another girl who was employed as a clerk-typist, and the switchboard operator.

Q. That was a separate switchboard from the switchboard (531) in the Local 542 office, was it not?

A. No, sir.

Q. You mean that all calls for Local 542 went through the switchboard in the office to which you are referring?

A. Yes, sir.

Q. Mr. Underwood, do you recall when Mr. McDonald testified? I am now reading from page 275 of his testimony.

MR. FREEDMAN: May I look over your shoulder?

BY MR. WOLFE:

Q. He testified as follows.

"My negotiations with the contractors of Philadelphia was in 1947 with Jasper White, in which we consummated an agreement on May 1, and everybody was happy and satisfied.

"Following that, the next year we went in, and Kelly was in there in charge along with Roy, and we had a strike that went into quite an issue; going into Court of Common Pleas, and he wound up with Nate Feinsinger coming in from Washington as the arbitrator, and that was the last that I participated in any negotiation for agreement after that. I was many times, I always felt I was ignored. I always asked for the privilege, but I was always (532) denied."

Do you remember him giving that testimony?

A. Yes, sir, I remember the testimony.

* * * * *

(535) Q. Mr. Underwood, I call your attention also to this quotation from Mr. McDonald's testimony on page

299 of the transcript and ask whether it refreshes your recollection as to the incidents. I am quoting from about the sixth or seventh line from the bottom of page 299. He said, in reference to the strike:

"No, I can't say I was in opposition to it. I can't say that I participated or favored it, either, as far as that is concerned, because I was completely ignored in the situation and wasn't permitted or accepted as one of the participants in negotiations at any time.

"Q. Did you make any suggestions with regard to the negotiations?

"A. I certainly did make suggestions. I asked Brother Underwood at least 20 or 25 times if he would allow me to participate, that with my broad experience over these many years as being identified with the (536) movement, and negotiating of contractors, of some of the biggest employers in America, that I would at least want to be helpful if I could.

"He told me that he was doing all right, told me the local union was under local autonomy. I had no intention or no thought of forcing myself in the situation. But I certainly did offer."

Now, will you tell me, Mr. Underwood, whether, in the light of that statement of Mr. McDonald, it is a fact that you would not permit him to participate in negotiations during the strike.

A. That is certainly not a fact, no, sir. The only negotiations that Mr. McDonald himself voluntarily withdrew from or would not participate in were negotiations with the contractor associations in Philadelphia.

Q. You say he withdrew from the negotiations with the contractors associations?

A. Following the arbitration, yes, 1948-49.

Q. Following the arbitration in 1948 and 1949. Are you referring to the Feinsinger arbitration?

A. Yes, sir.

Q. And do I understand your testimony to mean that

after the decision in that arbitration Mr. McDonald no longer participated in any contract negotiations with the (537) Philadelphia associations?

A. That is correct, sir. He never participated in negotiations. I want it understood. It was the arbitration he participated in.

Q. And by the Philadelphia associations do you mean the Pennsylvania Excavators Association, the Contractors Association of Philadelphia, and the General Building Contractors Association?

A. Yes, sir.

Q. Those three are referred to in your answer as the Philadelphia associations; is that correct?

A. Yes, sir, also the Wharf and Dock Builders Association. I don't recall him attending any negotiating sessions with them after the arbitration. However, it is possible that he did, since they were not involved in the arbitration.

Q. Now, Mr. Underwood, when did the offices of Local 542 first move to the City Center Building in Philadelphia?

A. It was in 1949. I believe it was early in 1949. I don't recall the dates.

Q. And you arranged for the moving to that location?

A. Yes, sir.

Q. The offices which were rented were on the fourth floor of the City Center Building, were they not?

A. Yes, sir.

(538) Q. Were they in the same location where they are today or where they were on August 19, 1952?

A. I don't know where they are today. I haven't been to the offices.

Q. I changed my question to August 19, 1952. You know where they were then, don't you?

A. Yes, sir.

Q. Were the offices still at the same location when you left in August or shortly thereafter of 1952?

A. No. I explained before that we first engaged offices at the far end of the building, where part of the offices

are now, with the expectation of taking over adjoining offices when they were vacated. However, they were not vacated, and we arranged ——

Q. Mr. Underwood, I didn't ask you that. Just a moment, please.

THE COURT: He is entitled to finish. He is making complete sense to me.

Go ahead, Mr. Underwood.

THE WITNESS: We then rented additional space in offices at the other end of the hall on the same floor.

BY MR. WOLFE:

Q. Well, now, Mr. Underwood, without telling me what your expectations were, I am interested only in actual location. (539) When you first moved to the City Center Building, did you move into quarters on the east end of the fourth floor of the City Center Building?

A. Yes, sir.

Q. And are those the same offices which were continued to be occupied by Local 542 during the period that you were connected with Local 542?

A. They are the offices that were occupied by Local 542, except that we did get additional office space at the other end of the hall on the fourth floor.

Q. And when was that, approximately?

A. I think it was about two months after, two or three months after, we rented the office space in the east end of the building.

Q. So that about two months after you moved to the City Center Building you acquired additional space at the opposite end of the building on the Broad Street side, did you not?

A. Yes, sir, about that period of time. I don't remember the exact dates, but it is approximate.

Q. And you moved into that new office space which was acquired at the other end of the building all of your files and records, did you not?

A. No, I wouldn't say that.

Q. Well, we won't quibble with the word "all". Did you (540) move practically all or almost all of your files and records?

A. The files were certainly moved, the files that I would want to refer to, were moved into the office that I was occupying, along with others whom I mentioned before.

Q. Do you mean to say that there were other people who were occupying the space at the Broad Street end of the fourth floor of the City Center Building besides you?

A. There were other people in the office.

Q. Who were the other people?

A. Well, there was the clerk-typist who was employed and worked in the office. She had a desk in the office and a typewriter, and there was my secretary, who was also in that office, and the switchboard was in the office and manned by the switchboard operator.

Q. That is, you had the switchboard moved from the east end of the offices, where the routine matters of the Local were being performed, over to this new space on the Broad Street end, did you not?

A. It was moved at some later date, yes, after we moved into the offices at the end of the hall.

Q. Now, outside of your secretary, who was Miss Irene Fitzpatrick, was it not?

A. That is correct.

Q. What was the name of the other girl, who operated the (541) switchboard? Was that Miss Fitzgerald?

A. Miss Fitzgerald, yes, sir.

Q. There were no other officials of the union who used that office, were there?

A. No, sir, except on the occasions Mr. McDonald would come in.

Q. Prior to the acquisition of this space on the Broad

Street end of the building, you and Mr. McDonald each had an office in the space occupied by Local 542 on the east end of the building, did you not?

A. Yes, sir.

Q. And after you moved whatever you did move to the space you referred to, the Broad Street end of the office, Mr. McDonald continued to be in the other end of the building, didn't he?

A. He continued to occupy the same office space that he had, yes, sir.

Q. At the other end of the building?

A. Yes, sir, at the east end of the building.

Q. And thereafter all calls for anyone at Local 542 had to come through the switchboard in the office which you occupied?

A. It came through the switchboard, yes, sir.

Q. What name was on the door of the offices occupied by (542) Local 542 at the east end of the building? What name or names?

A. I believe it was International Union of Operating Engineers, Local 542.

Q. And what name or names were on the door of the office at the Broad Street end which you occupied?

A. I don't believe anything was put on the door.

Q. There never was a name put on that office, was there?

A. No, not to my knowledge. Do you want the reason for it, sir?

Q. If you will just answer my questions, Mr. Underwood, I will be perfectly satisfied.

Mr. Underwood, you referred in your direct testimony to the fact that prior to your election as president quite a number of members of Local 542 or its branches were working on permits. I think you called them permit men.

A. Yes, they paid permit fees.

Q. Did you effect any change with respect to the status of those men after you were elected president?

A. Yes, together with Mr. McDonald.

Q. Just what did you do?

A. I requested Mr. McDonald to get permission from Mr. Maloney to eliminate the requirement that these men in (543) Local A and B pay $2.50 a week permit fees.

Q. With what result?

A. With the result that Mr. Maloney granted that permission. In fact, I think he issued an order to that effect after application had been made to him for permission to discontinue the fees that had been in effect during the period of supervision.

Q. An order to you?

A. The order came. I am not sure whether it was addressed to Mr. McDonald or whether it was addressed to me. I believe it was addressed to me. However, I am not sure.

Q. Your testimony is, then, that although you initiated the idea and requested it, your request for permission to do it was followed by an order from Mr. Maloney directing you to do it?

A. That is correct, sir, yes, sir.

Q. Approximately how many permit men would you say were transferred from one of these branches to Local 542 as a result of your efforts or your program?

A. Well, over the period of years under autonomy I presume there was probably, oh, a thousand, eleven hundred, perhaps.

Q. That is, a thousand or eleven hundred people, I understand you to say, were transferred under this program of (544) yours from either Branch A or Branch B to the parent Union 542; is that right?

A. That is correct, sir.

Q. Over how long a period would you say those transfers took place? When did it begin? About when did you accomplish the objective that you referred to?

A. Well, there was a great rush, of course, to transfer initially from the branches, that is, B Branch, to the parent body, and then it diminished somewhat as time went by, but I would say it extended over the entire period of time

However, there were more in one given year toward the start of the program, at the start of the program, than there were later.

Q. Can you give me any idea how many were so transferred by you during, let us say, the first six months after you became president?

A. Oh, well, I don't know. I would have to see the figures to recall that.

Q. You have no idea?

A. No, I can't say. I can't say now how many there would be. As I pointed out at the start, there were many members who had been in the B Branch and the A Branch for many years under International supervision who were anxious to transfer so they could have voting rights in the union, and at (545) first there was a large number, but I was only aware of the fact that there were a lot of applications coming in for transfer.

Q. Am I correct in my understanding from your testimony the other day that you considered that one of the major accomplishments after you became president?

A. I thought it was a very important one, yes, sir.

Q. But you have no idea whether one or two or two hundred or three hundred were transferred within six months after you began that program?

A. That is a wide range, one or two or three hundred. I can't give an exact figure, of course.

Q. I didn't ask you for an exact figure.

A. I would say it ran into hundreds in the first year, and that's an approximate guess now. I just can't recall now the numbers. We were not interested in how many were coming in at any particular time. We were interested in making membership in 542 available.

Q. Now, the initiation fee which those men so transferred had paid to the union prior to transfer was $60, wasn't it?

A. In the A Branch, yes.

(546) Q. Well, these permit men who were transferred from Branch A or Branch B to the Parent 542, how much

initiation fee had they paid when they were admitted to their respective branches?

A. Well, that was $80, I believe, in the B Branch. However, under International supervision it did change from time to time, and I think when we went in, I believe it was $80 for the B Branch and $60 for the A Branch members initiation fee. It was later raised to $95, I believe.

Q. It was later increased to what?

A. To $95, because of an increase in dues before local autonomy was installed.

I recall now on the last answer why the increase was brought about. When the Death Benefit Fund was established, it was provided that all members would then pay a certain amount into the Death Benefit Fund initially to start it out, and it was decided by the membership that all new applicants coming in would pay the same amount in addition to the initiation fee. I believe it was $20 required in order to make themselves eligible immediately for benefits under the Death Benefit Fund. That is when the initiation fee was changed.

Q. The Death Benefit Fund had nothing to do with the (547) initiation fee, did it?

A. Well, the initiation fee, yes. The Death Benefit Fund had that much to do with it, that all new members coming in were required to pay the $20 just as the members of the Union had been required to pay when the fund was set up in order to be eligible for benefits immediately from the Death Benefit Fund.

Q. Do I understand then that when the Branch A members and the Branch B members were admitted to membership in those branches they paid an initiation fee of $80? Is that what you are telling us?

A. No, sir, it came to $60.50 in the A Branch after the $20 was added to that, and this was set up, of course, before local autonomy was installed in the Union.

The fee for the B branch members was raised to $95 which would make the initiation fee 60—or $75, approximately—yes.

Q. Mr. Underwood, you testified on December 1, 1954, on pre-trial discovery proceedings ——

MR. FREEDMAN: What page, please?

MR. WOLFE: Page 23.

BY MR. WOLFE:

Q. Reading from page 23 near the bottom of the page, (548) this question was asked, Mr. Underwood, as quoted in the transcript, and I am reading it to you to refresh your recollection as to the testimony.

"Q. Now, their dues as a member of the—initiation fees as members of the Branch Union was how much?

"A. $60.50 for the A Branch.

"Q. And when they were transferred, did they pay an additional initiation fee?

"A. Yes, they paid the difference between the initial fee in their Branch and the fee of the Union they were transferring to.

"Q. Of how much?

"A. Well, it was $249 initiation fee in the Parent body, so an A Branch member would have to pay the difference between the $60.50 and the $249 when he transferred."

"Do you remember giving that testimony?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir, substantially correct. It is correct, yes.

Q. So that when every permit man was transferred by you from the Branch to the Parent Union, he had to pay to the (549) Union approximately $180, did he not, additional initiation fee?

A. Members of the A Branch, yes, sir, that was the requirement.

Q. Actually ——

THE COURT: It is $189.50.

MR. WOLFE: $179.50.

THE COURT: $189.50.

MR. WOLFE: $189.50.

BY MR. WOLFE:

Q. So that if you transferred 1100 members, at that rate you collected almost $200,000 on the transfers?

A. If that is the figure, if that is the correct figure.

Q. Did you ever render an account of the funds thus collected from these members so transferred?

A. Yes, sir.

Q. Where is it?

A. Why, it is in the treasury of the Union, the report of the treasury and finances of the Union.

Q. Do you have a copy of it?

A. No, sir, I do not have. It is reflected in the report of the treasury.

Q. What report is it?

(550) A. Reports, audits that were made of the Local Union's finances and records.

Q. Where are they?

A. They are in the Local Union office.

Q. Where did you keep them, in your office or in the office where the general routine business was conducted in the east end of the building?

A. They were in charge of Miss Gallagher in the east end of the building. I should say Miss Gallagher was in charge of them.

Q. Mr. Underwood, was Daniel A. Gardner the Secretary of the Local Union from the time, initially from the time, that you became President?

A. Yes, sir.

Q. Mr. Underwood, I show you a document consisting of five photostatic pages, and on the fourth and fifth pages there is a signature which I will ask you whether you can identify.

* * * * * * * * *

(558) Q. I believe the question was whether you could identify the signature that appears on the fourth and fifth pages of (558a) that exhibit.

A. It appears to be the signature, yes, sir.

Q. The signature of whom?

A. Daniel A. Gardner.

(559) Q. And he was the secretary of the union, was he not?

A. Recording secretary, yes, sir.

Q. Appointed by you?

A. No, sir. Elected.

Q. Elected?

A. Yes, sir.

THE COURT: As the early part of the minutes will show, when the officers were installed.

BY MR. WOLFE:

Q. Which of the elected officers, as indicated by those minutes, had been officers of the Local prior to the election?

THE COURT: I think you will find that on page 2.

A. Maurice F. Rudden had been an officer, I presume an officer, during the International supervision.

Q. What office had he held?

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A. Financial secretary.

Q. Financial secretary, and he was elected in what capacity in 1948?

A. Financial secretary.

Q. So he carried over in the same position?

A. Yes, sir.

Q. Who else? How about Mr. Mogan?

(560) A. Mr. Mogan's name doesn't appear here. That is the only one I see who was carried over, who was elected in this election now in March of 1948, who had previously been an officer.

Q. Is there any reference on the first page of those minutes to a communication to the Local from Mr. Maloney?

A. Yes, sir, there is.

Q. And would you read that part of the minutes.

A. "A letter from General President William Maloney to M. F. Mogan instructing that as of March 22, 1948, no more permit fees are to be collected from Branch Local Members of this Local Union was read. Motion was made by Brother Denoncour, seconded by Brother Charles Nichols that this communication be received and concurred in. Brother McDonald explained the communication. The motion carried."

Q. Do you recall that communication?

A. No, sir, I do not.

Q. Do you recall the reference to it at that meeting?

A. No, sir, I do not. I recall discussing this with Mr. McDonald after we were installed five or six days later.

Q. I didn't ask you that, Mr. Underwood. I asked you whether you recalled the communication. You have never seen a copy of the communication?

(561) A. Yes, I did see a copy, but I am not certain now whether it was addressed to Mr. McDonald or addressed to the Local Union.

Q. Do you have any reason to doubt the accuracy of Mr. Gardner's minutes?

A. The only reason I have to doubt the minutes is be-

cause I have a very vivid recollection of discussing this matter with Mr. McDonald and asking him to contact Mr. Maloney and get permission to discontinue the permit fees. At that point I had not seen a letter.

MR. WOLFE: I don't believe this has been marked.

THE COURT: What date is it?

BY MR. WOLFE:

Q. What was the date of the meeting referred to in those minutes?
A. March 31, 1948.

BY THE COURT:

Q. Do you remember the date of the election in 1948? I think you said it was in 1948 the election was had.
A. Yes, sir.
Q. Do you remember what month of 1948 it was in?
A. Yes, sir, it was March 25, 1948.
Q. Election, March 25?
(562) A. Yes, sir.

THE COURT: Is there in that minute any date given on Mr. Maloney's letter?

MR. WOLFE: No, there is not.

THE COURT: All right.

MR. WOLFE: It merely says a letter from General President Maloney to M. F. Mogan instructing that as of March 22 no more permit fees are to be collected.

BY THE COURT:

Q. You were elected on March 25?
A. Yes, sir.
Q. So that order was effective prior to your election?
A. It came in at that time, yes, sir.
Q. Your first election was on March 25, 1948; is that right?
A. That is correct, sir.
Q. So this antedated your election?
A. Yes, sir.

THE COURT: Very well.

(Minutes of meeting held March 31, 1948, were marked Exhibit D-5 for identification.)

BY MR. WOLFE:

Q. Mr. Underwood, the meeting of March 31, 1948, the minutes of which have just been referred to by you and have (563) been marked Defendants' Exhibit No. 5, that was the first meeting held after your election, was it not?
A. It seems to me that meeting was held March 29, when the officers were installed.

THE COURT: Officers were installed at this meeting.

THE WITNESS: I see that now on the date.

BY MR. WOLFE:

Q. Do you have any minutes of any meeting earlier than March 31, 1948?
A. I don't have any, no, sir.
Q. Was Mr. Kelly at that meeting of March 31?
A. Mr. Robert Kelly?
Q. Your attorney, yes, sir.

THE COURT: Let him look at the minutes. I think that is only fair, since they have been produced. Let him look at it.

BY MR. WOLFE:

Q. If Mr. Kelly was at the meeting, would the minutes reveal that?

A. I don't know, sir.

THE COURT: Didn't I see Attorney Murdoch's name on there?

THE WITNESS: That refreshes my recollection, (564) yes, sir.

No, sir, this does not indicate that Mr. Kelly was present.

* * * * * * * * *

(565) Q. How were the business agents of Local 542 selected after you became president?

A. They were elected the first year by the Executive Board and approved by the membership of the union. I should add, I suppose, thereafter, after the first year, they were appointed by the business manager, by me.

Q. That is, you didn't make appointments until after 1949 of business agents?

A. That's right, sir, when I was directed by the membership to make appointments of business agents.

Q. Is there anything in the minutes to the effect that the membership instructed you to do that?

A. I presume so.

Q. Were there any physical encounters during membership meetings during the period that you were president of the union, Mr. Underwood?

A. No, sir, none that I knew of.

Q. Did you attend all of the meetings?

A. All with the exception of a few occasions when I was out of the city, either at Executive Board meetings or (566) conventions, and for a period of time when I was ill. I didn't attend them all, but with those exceptions, I did.

Q. And at no time at any meeting that you attended during your regime was there a fist fight or anyone beaten up?

A. There was no fist fight, no one beaten up, to my knowledge, at any meeting.

Q. Now, I want to read you another excerpt from Mr. McDonald's testimony and ask you whether this refreshes your recollection as to the incident referred to.

MR. FREEDMAN: What page, please?

MR. WOLFE: Page 287, beginning just below the center of the page.

BY MR. WOLFE:

Q. Mr. McDonald was asked this question:

"Q. Well, during Underwood's period in office, they were orderly and well conducted, weren't they?"

The question was asked by Mr. Freedman. He answered:

"A. Oh, they weren't quarterly. They were monthly.

"Q. Sir?

"A. They weren't quarterly. They were monthly.

"Q. No. I said orderly.

"A. Oh, orderly, yes. But they had to be (567) regulated. A system had to be adopted or—in other words, we used to have a meeting, Abe, of the general membership. They were the parent body men, the B men, the A men and the C men, and they were all in there together, and they got to be an unruly mob. So it was regulated that just the parent body men would meet.

"And then it was found that later on in the evening, why cliques would get together and they would raise hell, after the decent men or the men who had to report to work in

the morning would leave at ten or half-past ten, this clique would hang around and put over whatever motions they thought would be to their interest. So it was necessary, the Executive Board adopted a recommendation to the membership that the meeting would terminate at ten o'clock. So they were scheduled to start at eight. They would usually start at 8:30 or 8:20 and be out at ten o'clock. They were pretty well orderly after that. A fight would be there. You would expect that. They were human."

Does that refresh your recollection as to the nature of the meetings of the membership and as to the change in the nature of the membership, the exclusion of the B men (568) and the A men from the meetings?

A. Yes, sir. It refreshes my recollection as to what the real situation was and what he was referring to in his testimony.

Q. Will you tell us.

A. Yes, sir. Immediately after we went into office in March of 1948, members from Local 825 came into our meetings and created disturbances. They would get up on the floor. They would interrupt the other members when they were speaking, and they aligned themselves with a few members in Local 542 who had been defeated for the position as business agents in the union, and they were creating such a disturbance at meetings, only this handful of men and the men from New Jersey, that Mr. McDonald urged the Executive Board to adopt a recommendation that the local union go into executive session at meetings and thereby exclude all non-members of Local 542.

Thereafter Mr. McDonald started an investigation on behalf of the International Union, investigating the conduct of certain members of the union who were aligning themselves with these people from 825 in New Jersey, and as a result of that investigation this disorder stopped at the meetings.

Q. What was the nature of the disorders?

(569) A. The disorder was simply getting up on the

floor at the meetings, interrupting members who tried to talk, and insisting upon making dilatory motions, such as the reading, when they attempted to read the minutes of the Executive Board, they would get up and start talking and say they didn't understand this and they wanted it taken up seriatim, and then they would want to quarrel and argue about each point in the Executive Board minutes.

The members got disgusted with it, and they got up on the floor, and a motion was made on the floor that anybody disturbing the meeting and causing dissension such as they were doing be fined up to $25 and suspended from attendance at the meetings.

It was after this took place that Mr. McDonald conducted his investigation and kept a stenographic record of the evidence brought out during his investigation.

Q. Well, now, Local 542 couldn't impose a fine on Local 825?

A. Local 825 members who had previously been in here while supervision was in effect left this area and went over to 825, into 825, but they immediately started coming back into the local union meetings creating disturbances.

Q. Who were these people?

A. One was Ray Dawson; another was Charles McIntyre.

(570) Q. Incidentally, is Ray Dawson one of the plaintiffs in the other action that is being tried here today?

A. No, sir, that is a different Dawson entirely. This Dawson was a plaintiff in the case in 1946, filed in 1946.

Q. Do I understand, then, that there were some members of Local 542 who transferred their membership to Local 825, and then, after you became president, came back to Local 542; is that it?

A. They transferred their membership after we obtained local autonomy for the union, because they had deserted the autonomy group and had been given jobs as business agents by the International. They transferred to 825, but they came over from 825 and attended the meetings of Local 542.

Q. Well, were they at the time members of Local 542?

A. No, sir, they were not.

Q. Could Local 542 impose a fine on a non-member?

A. Yes, sir, they could bring charges against that member.

* * * * * * * * * *

(571) Q. Was such a motion adopted?

A. The motion was adopted that the president be empowered to impose a fine of from $5 to $25 upon members causing dissension in the union. Those were members of Local 542.

(572) Q. So that members of Local 542 were causing dissension and disruption in the meetings, were they not?

A. There were a few members who aligned themselves with the group from New Jersey, who did cause dissension in the meetings.

Q. Well, now ——

A. It wasn't serious dissension, but it was serious enough to disrupt the normal progress of the meetings until the members themselves insisted upon something being done about it, and Mr. McDonald, the International Vice-President, insisted on something being done.

* * * * * * * * *

Q. Did you say, Mr. Underwood, that the members of Local 542 who transferred their membership to Local 825 —incidentally, is it 825 or 823?

A. 825.

Q. 825.

That the 542 members who transferred their (573) membership to 825 had been business agents of 542 who were defeated for election?

A. No, one of them had been a business agent—Ray Dawson. The others had switched over at some time just before

our fight was completed, before we got the decision in court giving us our local autonomy; they had aligned themselves with the International Union and against the autonomy group. They transferred.

Q. Was that because they had moved, changed their residences to New Jersey or their jobs?

A. I think a couple of them moved to New Jersey. However, one of them I knew remained—still lived on the Pennsylvania side.

* * * * * * * * *

(574) Q. I show you this document consisting of two pages, and I ask you whether you can identify that document. In the first place, do you recognize the signature on the second page?

(575) A. Yes, sir, that appears to be the signature of Daniel A. Gardner, Recording Secretary.

Q. Of Local 542?

A. Yes, sir.

This is headed Minutes of the Special Meeting of the Executive Board of the International Union of Operating Engineers, Locals 542, 542A, 542B, and 542C Held on Thursday Evening, June 3, 1948, at 201 North Broad Street, Philadelphia, Pennsylvania.

Q. Do you recall the meeting?

A. Well, I don't recall the meeting, but it undoubtedly was held.

MR. WOLFE: I ask that the document identified by the witness be marked for identification as Defendants' Exhibit 6.

(A copy of the minutes of the special meeting of the Executive Board of International Union of Operating Engineers, Local 542, held on June 3, 1948, was marked for identification as Exhibit D-6.)

(576) Q. Referring to Exhibit D-6, Mr. Underwood, does that refer to any communication directed to the Local Union by Mr. Maloney?

A. Yes, sir, it refers to a communication to John J. McDonald from Mr. Maloney.

Q. Will you read it, please?

A. It isn't dated. However, it is addressed to John J. McDonald, Third Vice-President, 201 North Broad Street, Philadelphia, Pennsylvania. It reads:

"Dear Sir and Brother:

"I am hereby directing you to consult the officers of Local Union #542 immediately and see that all B Branch members are transferred into the Parent Body. This has been a source of trouble in Local Union #542 and I believe when they transfer all B Branch members into the Parent Local Union they will be doing something not only to help themselves but to help the membership in that locality.

(577) "I suggest that you put a limit of approximately six months on a member being a member of the B Branch Local Union. I want this made a provision when you take men into the B Branch, to find out if they are qualified operators before transferring them into the Parent organization.

"With kindest regards, I am

"Fraternally yours.

"William E. Maloney,

"General President."

Q. I also show you, Mr. Underwood, a document here, rather, a group of documents consisting of six pages, and I ask you first whether you can identify the signature on the last page.

A. Yes, sir, that appears to be the signature of Daniel A. Gardner, Recording Secretary.

Q. Can you identify the document or the group of papers?

A. Well, they are headed Minutes of the Notified Meeting of the International Union of Operating Engineers Locals 542, 542A, 542B and 542C Held on Tuesday Evening, June 15, 1948, in Town Hall, Broad and Race Streets, Philadelphia, Pennsylvania.

Q. Are those the minutes of that meeting contained in the six pages that I have handed to you?

(578) A. Well, there are some longhand notes or letters in here, or a letter ——

Q. Is that the ——

A. —I don't recall being in the minutes.

Q. Is that the letter which is copied in the minutes on the second page? Will you look at it and see?

A. Yes, sir, that appears to be—to have been copied into the minutes.

Q. Did you direct that the letter be attached to the minutes?

A. Oh, I don't think I directed it, sir. The Recording Secretary prepares the minutes, and they are filed in the Union office. I don't remember even suggesting it.

Q. Now, the minutes refer, do they not, to a letter addressed to the officers and members of Local Union 542; is that correct?

A. Yes.

Q. Will you read the letter, please?

I mean will you read it aloud, please, for the record?

A. I am trying to get it straightened out here in my mind.

It is headed Prepared statement made by Third Vice President, John J. McDonald, at meeting of (579) Local Union 542 held at Town Hall, Tuesday, June 15, 1948.

"To the Officers and Members

"Local Union 542

"Greetings:

"Here is an order of the General President:—

"Following clause in contract with Lummus Company and other National Contractors must be honored—'No

changes shall be made by the Union or by Local Unions in hours or wages or working rules which would entail an increased cost to the Employers or the Customer without the Employers first being given sixty days' notice and agreeing to such change.' (Unquote)

"Imperative men be returned to work on Lummus Job immediately, also on jobs of the other contractors having same agreement.

"William E. Maloney."

Q. Was that order presented to the meeting?

A. Yes, sir, it was.

Q. What action was taken with respect to it—just a moment, have you read the entire communication?

A. From William E. Maloney.

Q. Let me see it a moment.

(580) Well, what you have just read was included in a letter from Mr. McDonald addressed to the officers and members of Local 542, was it not?

A. Yes, sir.

Q. Will you read the rest of Mr. McDonald's letter?

A. Yes, sir.

"There is only one issue before this body as far as I am concerned. Will this Local Union obey the mandate of the International Union by ending the strike on the jobs of Contractors covered by the National Agreement? It is your duty under the solemn obligation as members, and in the case of Officers, as Officers, to uphold and obey all mandates of the International Union of Operating Engineers.

"Those duties are spelled out in the International Constitution which is in force and effect. If you disagree with the ruling of the International President, you are entitled to appeal, but pending determination of that appeal, the ruling of the General President stands and must be obeyed.

"If the Local Union should disobey, the General President is entitled to proceed in accordance, as outlined under Article VI of the International Constitution.

(581) "As a friend of Local Union 542 and as an Inter-

national Officer, I strongly urge that you obey the mandate of the General President and return to work covered by the National Agreement. In my opinion, it is your duty under the National Agreement and under the International Constitution.

"John J. McDonald

"Third General Vice President."

Q. What action was taken by the meeting?

* * * * * * * * *

(582) A. This is the portion that refers to the action taken.

"As requested by Brother Ortale, President Underwood re-read the letter from International Vice President John J. McDonald. Brother McDonald (583) gave an explanation regarding Local Autonomy in answer to remarks and questions by Brothers Bucklin and Henry Jaffola. Remarks and questions by Brothers McIntyre, Dick Miller, John Burke. Motion made by Brother John Burke, seconded by Brother Joe Devlin, that the order from International President Maloney be complied with. Motion lost."

BY MR. WOLFE:

Q. Now, you had been in office how long at the time of that meeting, about two months, three months?

A. Well, from—yes, about two and a half months.

Q. When did the strike begin that is referred to in that communication?

A. This began on June 1, I believe—no, no, it began about June 8, 1948.

Q. So that in less than three months after you became President, Local 542 was involved in the strike referred to in that communication?

A. Yes, sir.

Q. What is a national contract as referred to in that communication? What is meant by a national contract or an International contract?

A. A national contract is a contract entered into between Mr. Maloney and certain employers which provides (584) that these national contractors may come into an area where local unions have established agreements and work under more favorable conditions than the agreements established in the area, and under no circumstances under the national agreements is the local union permitted to take their men off the jobs of national contractors in order to enforce compliance with their area agreements, and that was the situation here, sir.

Q. You say it is a contract between Mr. Maloney and the national contractors? Is that what you said?

A. Yes, sir.

(585) Q. And on what do you base that?

A. I have seen them, sir.

Q. You mean Mr. Maloney personally has entered into those contracts?

A. He has signed them.

Q. As an individual or signed them as a general officer of the International Union?

A. As the president of the International Union, sir.

Q. Well, now, they are contracts between the International Union and the contractors, are they not, which have nationwide application? Isn't that the purpose of an International contract?

A. Well, as to the purpose of it. I don't know. I have my own opinions about that, sir, but it is a contract, or course, between the employers and the International Union signed, of course, by Mr. Maloney.

Q. And the contract that is referred to in that letter was a contract between the International Union of Operating Engineers and what company?

A. The Lummus Company.

Q. The Lummus Company was engaged in what business?

A. Why, they are specialty contractors who engage in refinery construction.

Q. Throughout the nation?

(586) A. As far as I know, they do, yes, sir.

Q. Under the International Constitution local unions are required to comply with contracts that are made by the International with national contractors?

A. I know of no provision in the Constitution which requires it, no, sir.

Q. You refused to allow Local 542 to comply with the terms of that contract between the International Union and the Lummus Company; is that correct?

A. I can't say that's correct, because we had never seen the contract, sir. The only thing we knew was that the local had gone on strike against the contractors in the area in order to obtain certain demands. Lummus Company was operating in the area and using members of Local 542 and they were included. We then got this instruction from Mr. Maloney that the men were to be returned to work for the Lummus Company because they had an agreement with the International Union.

Q. And you refused to comply with that order?

A. The membership voted not to comply with it, sir.

Q. Did you ask for Mr. Maloney's permission as general president of the International before you called that strike?

A. No, sir.

Q. Mr. Underwood, you referred in your testimony on Tuesday in this case to the efforts to organize the people (587) who were working on the Pennsylvania Turnpike. Do you recall that?

A. Yes, sir.

Q. That related to what year?

A. That began in, I believe, about May or June, 1949.

Q. What began in May or June of 1949?

A. Well, efforts to organize the men, bring the men into the union who were working on the Turnpike and probably adjacent projects.

Q. And how did that work begin? In what manner? What was done?

A. There again it is difficult to say just how it begins. You just decide that you are going up and survey the area and see what prospects there are of bringing the men into the union, and from that point on other trades get interested and you have little conferences and meetings and eventually you get to the point where you work out a program to follow for organizing.

Q. When did you first place pickets on the job, approximately?

A. It was in May or June, I believe.

Q. Of 1949?

A. Yes, I believe so.

Q. Were any members of Local 542 at that time employed by contractors on the Turnpike in the area where you had (588) established pickets?

A. There probably were a few, but very few.

Q. What was the purpose of the picket line?

A. The purpose of the picket line was to organize the men on the Turnpike and to induce them to come into the union, notifying them that the contractor was not paying the rates and the union was trying to induce the men to join the union so that the rates could be increased and conditions improved.

Q. Where did you place these pickets?

A. They were placed at various places along the Turnpike wherever they could be placed.

Q. Where were Local 542 pickets placed?

A. Well, all along the Turnpike.

Q. You mean the entire length of Pennsylvania?

A. No, this was the eastern end of the Turnpike that was under construction. It began about in Carlisle, went down through near Harrisburg, Lebanon, Colebrook, Morgantown, and so forth. That was the general direction, the general area, that it covered.

Q. And you had pickets at all these different points?

A. We had pickets wherever we could picket effectively yes, sir, where we felt we could.

Q. The contractors who were working in those areas were working on a non-union basis, were they?

A. Yes, sir.

(589) Q. Did you finally succeed in getting an agreement that they should work on a union basis?

A. We succeeded in getting an agreement, yes, sir, with the union that they would observe certain conditions and wage rates on the Turnpike.

Q. And how was that agreement obtained?

A. The initial agreement was a memorandum, actually of agreement, and it was obtained through the efforts of the pickets on the Turnpike, and finally, after three or four months of picketing on the Turnpike, Mr. Maloney called some local unions and asked them to take their members off any job of contractors in their area who were also working on the Turnpike.

Q. Well, now, as a result of the picketing, were you able to persuade any of the employees of these unions to join Local 542?

A. Yes, sir.

Q. You acquired some members as a result of that picketing, did you?

A. Yes, sir.

Q. Was any action taken with respect to jobs on which these contractors were working in other areas than in Pennsylvania prior to the negotiation of the contract with the contractors?

(590) A. Well, Mr. McDonald and I went to Pittsburgh and talked to one of the contractors in Pittsburgh, and we attempted to induce Mr. Wharton to assist us by removing men on jobs of these contractors who were working in the Pittsburgh area. However, that was never done until several months later in September, when I believe an order was sent out by Mr. Maloney or a request was sent out by Mr. Maloney.

Q. Mr. Underwood, did the local union have any bonds among its assets when you first became president?

A. Yes, sir, it did.

Q. In what amount?

A. I don't know. I am not certain at the moment. I believe there was a $15,000 bond and a $10,000 bond. I am not certain of that, however.

Q. Do you know what the amount of bonds among the assets of the local union was when your regime ended?

A. I believe it was about $105,000 in a safe deposit box.

Q. A bond?

A. Yes, sir, in the Corn Exchange Bank.

Q. Among the assets of Local 542?

A. Yes, sir.

Q. Does that include the bonds in the safe deposit box (591) of the death benefit fund?

A. I believe so. I am quite certain it does, yes, sir.

Q. I didn't ask you about the death benefit fund. I am asking you what the approximate amount or the exact amount, if you know, was of bonds among the assets of Local 542 at the time your regime ended.

A. I understood those bonds would be part of the assets.

THE COURT: All right, let us not quibble. Excluding bonds set aside as part of the death benefit funds.

THE WITNESS: I am not certain of the figures. I can only guess at this because I just don't remember the figures. I think that there were about $40,000 or $45,000, probably more, in bonds purchased from the treasury of the local union, and the balance of $55,000 or $60,000 was purchased from the death benefit fund.

BY MR. WOLFE:

Q. Well, the death benefit fund was not created by dues

from the members. That was created by assessments for the death benefit fund alone, was it not?

A. Yes, sir.

Q. The death benefit fund was never a part of the general assets of the union, was it? That was administered by trustees, wasn't it?

A. Yes, sir, that was separated after we went into office.

(592) However, before that it was all together with the general treasury.

Q. Well, now, isn't it a fact that at the time your regime ended the amount of the bonds in the safe deposit box among the assets of the local union was $60,000?

THE COURT: Does that include or exclude death benefits?

MR. WOLFE: Excluding death benefits.

BY MR. WOLFE:

Q. Would you say that is correct or isn't correct that the amount of the bonds in the safe deposit box belonging to Local Union 542 at the time your regime ended was $60,000?

A. I understood you to say that it is including both the death benefit fund ——

Q. No.

A. Oh, excluding, I see, from the treasury of the union. I think it was about that, yes, sir.

Q. Mr. Underwood, is it not a fact that after the picket line was established on the Turnpike, Mr. Maloney and the general office in Washington ascertained who the contractors were who were working on the Turnpike and that it was through his efforts that strikes were called against those contractors in their other jobs throughout the country and that (593) that is what led them to negotiate a contract with you to pay union rates on the Turnpike; is that correct?

A. That was done after several months of picketing, yes, sir.

Q. Is that correct?

A. I understood your question, when the pickets were put on the Turnpike was this done. I understood that to be your question.

THE COURT: Well, read the question back and see if you can understand it as stated.

(The question was read.)

MR. FREEDMAN: That is about three questions in one, I think, Your Honor.

BY MR. WOLFE:

Q. Well, do you understand the question, Mr. Underwood?

A. I believe I do, yes, sir.

THE COURT: Answer it if you can.

THE WITNESS: Yes. I would say that Mr. Maloney's action in calling the other local unions and asking them to cooperate with us, or directing them, was responsible to a great extent for the sudden ending of the strike and the signing of the agreement.

* * * * * * * * * *

(596) Q. Mr. Underwood, just before the adjournment of Court on Thursday of last week you were testifying with respect to the organization of the workers on the Turnpike. Do you recall that?

A. Yes, I have a recollection of it.

Q. And I had asked you some questions as to the part that Mr. Maloney played or took in connection with your success in organizing the workers on the Turnpike, and your answer, the last answer, which appears on page 593 of the record, was as follows:

"THE WITNESS: Yes. I would say that Mr. (597) Maloney's action in calling the other local unions and asking them to cooperate with us, or directing them, was responsible to a great extent for the sudden ending of the strike and the signing of the agreement."

Do you recall giving that testimony?

A. Yes, sir.

Q. And I assume that that is what you were referring to in your letter to Mr. Maloney of November 25, 1949, which has been marked as Plaintiffs' Exhibit No. 23 for identification, and I am quoting the statement in that letter to which I refer.

Well, would you read, so that it will refresh your recollection, the second paragraph in that letter, please.

A. Just the second paragraph?

* * * * * * * *

(598) Q. Is that the same matter that you referred to in your testimony on Thursday which I just quoted?

A. Yes, sir.

Q. Now will you also read the last paragraph in that letter.

A. "I again take the opportunity to express my appreciation to you for the invaluable assistance rendered during the trying period experienced by us in connection with the recent Turnpike dispute."

Q. Is that the entire paragraph?

A. Yes, sir. There are other things in the letter, of course, which explain the position of the local union, prior to the sending of this letter.

Q. You also referred, Mr. Underwood, in your direct tes

timony to the discontinuance of the practice of collecting (599) permit fees, I believe you said, of $2.50 per week from members of branch unions of Local 542, did you not? Do you recall that testimony?

A. Yes, sir; yes, sir.

Q. I believe you testified, in effect, that that was one of the things you accomplished shortly after you became President of Local Union 542 in March, 1948; is that correct?

A. It was through our efforts, I believe I said, that it was brought about, yes, sir.

Q. Did you mean by that testimony to say that you eliminated the practice of collecting permit fees from members of the branch unions?

A. Well, I say that we were responsible for the elimination of it. I discussed this with Mr. McDonald on a number of occasions even before the vote was taken which would determine whether supervision was to continue or terminate, and that was in February. After the vote was taken by the membership and they decided to terminate supervision over the local union, I again discussed this matter with Mr. McDonald.

Q. Mr. Underwood, I didn't ask you that. I asked you whether your testimony was that you eliminated the practice.

A. We were responsible for the elimination of the practice. It had been going on for 15 years, sir.

Q. I didn't ask you who was responsible. I am asking you (600) whether the practice was eliminated.

A. Yes, sir, it was eliminated.

Q. How long a period did it take to eliminate the practice after you became president?

* * * * * * * * *

THE WITNESS: It was a matter of a few days, I would say, after we were installed in office that this letter came

to my attention, and I believe a notice was then sent out to the membership advising them that there would be no more permit fees collected.

(601) BY MR. WOLFE:

Q. And how long after that took place was the practice eliminated?

A. Well, it must have been immediately.

Q. Will you give us some approximation as to what you mean by the term "immediately." Two or three weeks? Two or three months?

A. Just as soon as we could notify the membership and discontinue the practice. I don't know just how long it took now.

Q. Well, would you say that within a matter, to be liberal, of several months after you became president permit fees were no longer collected?

A. Oh, no, it was a matter of weeks, at the very most.

Q. Isn't it a fact, Mr. Underwood, that you continued to collect permit fees as long as you were president and that in some quarters you collected as much as $10,000 in permit fees?

A. Absolutely not, sir, not permit fees from A and B Branch members. We collected permit fees from members of other local unions who came into the area, as required by the Constitution, but no permit fees were collected from Branch members within the union.

Q. Do you have any records to show the amount of permit (602) fees which were collected by Local 542 under your regime?

A. No. The financial records of the local would show that.

Q. Do you have any independent knowledge of the subject?

A. Sir?

Q. Do you have any personal knowledge of the subject?

A. Oh, I don't recall the figures now, no, sir. I only know that the collection of permit fees from Branch members of the union was discontinued almost immediately after the local autonomy was granted to the membership by the Court.

Q. Isn't it a fact, Mr. Underwood, that throughout your regime members of Branch Locals were filing applications at almost every meeting for transfer from the Branch to the parent local so that they wouldn't have to pay permit fees, and that time after time their applications were turned down?

A. No, sir, that is not a fact. They were not required to pay permit fees, Mr. Wolfe. We were swamped with applications from people who were not then members of the union, and we had a number of applications for transfer. They were taken before the Board and their qualifications were examined, and if the Board felt that they were qualified to transfer into the parent body and operate the heavy equipment, they recommended their transfer.

Q. Mr. Underwood, in your direct examination you also (603) referred to an assessment which I think you said at the time you were admitted to membership in 1937 was 3 per cent of the wages. Do you recall that?

A. At that time, yes, it had just been reduced from 5 per cent.

Q. These assessments that you referred to, were the members credited with the amounts paid in their dues books?

A. It was marked in the books, yes, sir.

Q. And every time you paid the 3 per cent or whatever other percentage it was, you got credit for it in your dues book, did you not?

A. Opposite the dues stamp.

Q. Do you understand the question?

A. I don't understand what you mean by "credit," sir.

Q. If there was an entry made in the dues book, would that be a credit to you for payment?

A. It would be a notation, yes, that it was paid.

Q. And that was done every time you paid this assessment?

A. To the best of my knowledge, yes, sir, and this went on for a period of several years.

* * * * * * * * *

(604) Q. Mr. Underwood, what was the date of the first contract you executed with the Independent Contractors, do you recall? Was it in 1951?

A. Are you referring to the Independent Contractors in the Philadelphia area or are you referring to contractors outside the Philadelphia area also?

Q. At the time that the question was raised as to whether the Kelly agreement was effective for two years or for only one year and the Supreme Court of Pennsylvania held it was valid and effective for two years, that is the first time you negotiated with Independent Contractors, was it not, for the years 1951 to 1952?

A. Yes, sir, that was the first time that it became the general practice to negotiate with the Independent Contractors.

Q. And it was in that contract that the Independent Contractors agreed to pay the 25 cents per hour rate of increase?

A. Yes, sir, plus other improvements in the contract.

(605) Q. And it was in that contract that the independent contractors agreed to pay the 25-cent-per-hour rate increase?

A. Yes, sir, plus other improvements in the contract.

Q. When did that contract terminate? Did that terminate April 30, 1952, or was that a two-year contract?

A. It terminated April 30, 1952, one-year contract.

Q. 1952.

Now, when did you negotiate a new contract with the independents?

A. I believe that negotiations ended about, oh, the middle of April, 1952, for a new contract to become effective May 1, 1952.

Q. That is, you concluded the negotiations with the independents then prior to the termination of their existing contract?

A. Yes, sir.

Q. Prior to April 30?

A. Yes, sir.

Q. And that resulted in a further increase to be effective as of the year following the termination of that contract at 15 cents per hour; is that correct?

A. It effected—it provided for an increase of an additional 15 cents per hour to be effective May 1, 1952; (606) yes, sir.

Q. Now, did that contract with the independent unions include a safety code such as you submitted to the contractors associations during your negotiations with them?

A. No, sir; it did not; but it contained a clause which provided that either the independents or the union had an option to take advantage of any conditions negotiated in any contract subsequently with the associations upon 30 days' notice to either party.

Q. Have you included in your demands on the independent contractors a demand for the same safety code that you included in your demands to the association contractors?

A. No, sir, except for the clause I mentioned, the membership agreed to continue the contract with the independents——

Q. Mr. Underwood, I did not ask you that question.

MR. WOLFE: Will you please read the question.

(The pending question was repeated by the reporter, as follows:

"Q. Have you included in your demands on the inde-

pendent contractors a demand for the same safety code that you included in your demands to the association contractors?")

(607) THE WITNESS: Well, the safety code was not included in the demands with the independents.

BY THE COURT:

Q. The answer is no; is that correct?
A. Sir?
Q. The answer is no?
A. No, sir.

THE COURT: All right. We must have a few yes and no answers so that we can get along.

BY MR. WOLFE:

Q. Did you include in your demands during the negotiations with the independent contractors the pension plan which was a part of your demands to the association contractors?

A. No, sir. That had already been agreed to, Mr. Wolfe.

MR. WOLFE: I ask that that be stricken out, if Your Honor please, as not being—oh, excuse me.

What was your answer?

THE WITNESS: That had already been agreed to in the trust agreement that the trustees would explore the possibility of setting up a pension plan and set up a pension plan.

BY THE COURT:

Q. Do I understand your answer to be no, it wasn't sub-

mitted, because it was already an accomplished fact?

(608) A. It wasn't an accomplished fact. However, there had been a tentative agreement or a written agreement actually that the trustees would work on the establishment of a pension program.

BY MR. WOLFE:

Q. What written agreement are you talking about?

A. The trust agreement covering the new welfare program that was set up with the independents.

Q. Will you produce it, please.

A. I don't have it here.

* * * * * * *

(609) Q. Did you include in your demands during the negotiations with the independents the demand for parity of wage rates with the New Jersey wage rates?

A. No, sir.

Q. And during the same time that you were negotiating the contract with the independent contractors you were negotiating also with the representatives of the contractors associations, were you not?

A. At that—during that period; no, sir.

Q. You mean that you had no negotiations with the representatives of the three contractors association during the period of time from February to April, 1952?

A. Yes, sir, we did, I said, but at that time when we negotiated with the independents the contractors associations were refusing to negotiate with us and were refusing to continue the welfare program.

Q. Now, I believe you testified that the demands which you were negotiating with the contractors associations had (610) been approved by the membership of the local. Did you so testify?

A. Yes, sir.

Q. When? At what meeting was any such approval to those demands made by the local?

A. Well, it very probably was at the meeting in February, 1952. It had been discussed before that with the Executive Board. I just don't recall when it was submitted now to the membership.

Q. Well, would you during adjournment ascertain and find the minutes of the meeting to which you refer so that I can ask you some more questions about that later in the day?

A. I will try to, sir.

Q. Now, I call your attention to the following testimony by Mr. McDonald on that question and ask you whether this refreshes your recollection on the point, reading from pages 326 to 327 of the transcript: You were asked this question by Mr. Freedman ——

THE COURT: Who was?

MR. WOLFE: I mean Mr. McDonald—I am sorry—Mr. McDonald was asked this question by Mr. Freedman.

BY MR. WOLFE:

Q. "Q. You know that all of the demands had been (611) presented to the membership and to the Executive Committee, don't you, Mr. McDonald?"

He said, "I would say they were not."

"Q. You say they were not?

"A. No.

"Q. Why do you say that?

"A. Those addendums weren't, that we had here this morning. That Safety Code was not. And, well, I would say they were not at any meetings that I attended. There was meetings that I didn't attend, but I will say no, that they were not. Those twenty-six or twenty-eight additions, the 5 per cent increase and the five hundred dollar

penalty for contractor violation, and anything—and the one hundred Pension Plan were added to the contract and the submission after the independent agreement was signed, was not approved at any meeting that I was at."

Does that refresh your recollection, Mr. Underwood, as to whether the things referred to in his testimony, the safety code, the 26 or 28 additions in the addendum, the 5-per-cent increase, the $500 penalty for contractor violation, the pension, $100 pension plan, were or were not submitted to the membership for approval?

A. I recall very definitely that Mr. McDonald was present at a meeting when those demands were presented, and I (612) recall also that he discussed them at great length with me prior to their submission to the membership and discussed them with the Executive Board of the union and heartily approved them.

MR. WOLFE: Would you read the last part of that answer, please.

THE COURT: And heartily approved them.

BY MR. WOLFE:

Q. And heartily approved them?

A. Yes, sir. He participated, too, in the drawing up of the demands, Mr. Wolfe.

Q. Well, now, with respect to whether or not he approved these demands, let me call your attention to this testimony by Mr. McDonald and ask you whether it refreshes your recollection: I am referring to page 374 of the transcript.

You were asked the question:

"Q. Well, I know you said that before, but I am asking you now whether you didn't object."

This again was the question asked of Mr. McDonald.

A. I can't hear you, Mr. Wolfe.

Q. I say, this again is a question asked by Mr. Freedman, presented by Mr. Freedman to Mr. McDonald:

"Q. Well, I know you said that before, but I am (613) asking you now whether you didn't object, or wouldn't have objected to the demand for an increase in wage rates as it was outlined in the rider of the demands."

The answer was:

"A. Now, let me understand what you mean. I wouldn't be in objection if at the time they instituted or started their negotiations with the contractors if that was part of the original proposition, but not the way after the men had been on the street, or the strike had been in effect for six or eight weeks, and then to come through, when you already have an insurmountable condition in existence and add another heap on top of that to make it impossible entirely, no. I would certainly not be a part. If it was in there originally, I certainly would be—I say nothing is too good for our engineers."

Do you recall his statement that that was his position with respect to the timing of these demands?

* * * * * * * *

(614) BY THE COURT:

Q. Do you remember that that was McDonald's statement? Were you there when this was taken, this testimony?

A. Yes, sir. It sounds very much like ——

Q. It is as simple as that, Mr. Underwood. Do you remember that he said it?

A. Yes. I believe he did say it.

THE COURT: All right.

Now, go on, Mr. Wolfe.

BY MR. WOLFE:

Q. Now, Mr. Underwood, the strike against the association (615) contractors which is involved in this present litigation began on May 1, 1952, did it not?

A. Yes, sir.

Q. How many strikes had there been prior to that year in your regime between 1948 and 1952? How many strikes of Local 542 had you conducted during the period of 1948-1952? Will you tell me the first one after you became president.

A. The first strike was voted by the membership in 19—June of ——

Q. I didn't ask you that, Mr. Underwood. Will you tell me when the first strike occurred after you became president, the first strike in which Local 542 was involved.

MR. FREEDMAN: I think Mr. Wolfe's question was, "Do you recall the strike, the first strike?" or something of that sort.

BY THE COURT:

Q. Give us the nearest time when you can, Mr. Underwood, and let us get along.

A. The first strike occurred in June of 1948.

BY MR. WOLFE:

Q. And was that against the association contractors or some members of the association contractors?

A. That was against all contractors who had not signed— (616) an agreement with the union.

Q. Now, when was the next strike in which Local 542 was involved?

A. The next strike was in 1951. That strike was against the association contractors.

Q. And when was the next strike in which Local 542 was involved?

A. In 1952, May 1, 1952.

Q. So that there were only two strikes prior to that during your regime; is that correct?

THE COURT: That was the third strike, according to his testimony.

THE WITNESS: Did you say prior to my regime?

BY MR. WOLFE:

Q. Yes. Do I understand your testimony to be that there were only two strikes prior to the one of May 1, 1952, during your regime?

A. Only two strikes, general strikes. There were stoppages of work on jobs where we were trying to organize and where there was—we were trying to effect compliance with the agreement, but these were strikes, general strikes; yes, sir.

Q. How many work stoppages?

A. Strikes against the associations.

(617) Q. How many work stoppages were there during that period?

A. Oh, I don't know. We were organizing, and there were, I suppose, a considerable number of work stoppages throughout the territory.

Q. In which Local 542 was involved?

A. They were involved and other trades were also involved; yes, sir.

Q. Do you remember, Mr. Underwood, having a discussion—I believe it was in the front of this building—with Mr. Halloran and Dr. Taylor and possibly others about the possibility of arbitrating the dispute between you and the association contractors in this case?

A. In front of this building?

Q. Well, without regard to the location, do you know what I am talking about?

A. My recollection is that it was at the suggestion of the Court in chambers that we ——

Q. Well, I am asking you ——

A. —get together and discuss it.

Q. I am asking you now, regardless of how it originated, whether you did not have a discussion with Dr. Taylor, Dr. George W. Taylor and Mr. Halloran and others concerning a possibility of arbitrating the issues between you.

THE COURT: This was prior to the 1952 strike?

(618) MR. WOLFE: No, this was—I am not certain whether it is prior or subsequent, but it was during the negotiations. Perhaps Mr. Underwood can identify that.

THE COURT: That is one fact the jury knows very well; so go ahead. Let us hear it.

THE WITNESS: Yes, sir. There was a discussion prior to May 1, 1952.

BY MR. WOLFE:

Q. It was prior to May 1, 1952?

A. Yes, sir.

Q. And where did it take place?

A. In Dr. Taylor's office.

Q. Dr. Taylor's office?

A. I don't know how much was discussed, I believe in chambers here, when ——

Q. Do you recall that Dr. Taylor said in effect that if the parties were willing to arbitrate the contract issues and have him as the arbitrator they should send him a letter advising to that effect?

A. He well might have. I don't recall that. I only recall how it ended, but he might well have said that.

Q. Well, do you recall that after that conversation he notified, Dr. Taylor notified both parties that both had agreed to arbitration and that he fixed a date for the (619) arbitration?

A. No, sir.

Q. You don't recall that?

A. No, sir.

Q. And don't you recall that following notice to both parties, that both parties had agreed to an arbitration, you then insisted that if it were arbitrated he must establish certain provisions in his decision on some of these points? Do you recall anything of that sort?

A. To be clear, are you talking about the arbitration he suggested prior to May 1, 1952, or the one that followed?

Q. The arbitration that was a collective bargaining arbitration prior to May 1, 1952.

A. No, sir. I don't recall that. There were discussions about it but I don't recall any agreement to arbitrate.

Q. Well, you mean by that that you never notified Dr. Taylor that you would be willing to have him arbitrate the disputed contract issues?

A. I don't recall any such communication. There might have been a communication which we said that under certain circumstances we would agree to arbitration of certain issues, but I just don't recall the communication now. As I say, I can only recall how it ended.

Q. Mr. Underwood, you testified on February 6—I am (620) reading from page 307 of the record—rather, page 306 at the bottom—you were asked this question:

"Q. Were you having any difficulty getting pickets to man the jobs?"

You said, "Yes, sir. We were."

And you were asked:

"Q. Can you explain why that situation existed?"

You said:

"A. Well, we had employment for all the members of the union. As a matter of fact, we had to call on local

unions outside to bring them in to man the jobs. We had difficulty getting enough men to man the picket lines."

Do you recall that testimony?

A. Yes, sir.

(621) Q. Does that mean that there were no Local 542 pickets, members of Local 542 who did any picketing, during the strike?

A. Oh, there were several members of Local 542 who did picket duty during the strike.

Q. You said that there was employment for all the members of the Union. What do you mean by that statement? Do you mean that all the members of the Union were actually employed so that they could not do any picket duty, or what did you mean?

A. It meant that there was work available for all of the members of the Union and members outside the Union, but we did need pickets, and several members agreed to picket rather than take jobs.

Q. You say several members agreed to picket. Do you mean several members of Local 542 agreed to picket?

A. Yes, sir.

Q. How do you define the word "several"? How many do you mean?

A. It varied from, I would say, 70 to 100, sometimes a little lower than 70 perhaps.

Q. That is, from 70 to 100 members of Local 542 were doing picket duty; is that correct?

A. Yes, sir.

(622) Q. And about how many members of the Maritime Union were doing picketing?

A. It is difficult to estimate that, because, of course, we had no check on the number of pickets that would come up from the Maritime Trades to assist us. I suppose there were at some times a hundred pickets from the Maritime Trades.

Q. Do you know how much money was spent by Local 542 in payment to members of Local 542 for performing picket duty?

A. They were paid $10 a day.

Q. Do you remember what the total was? Was it $50,000 or $60,000?

A. I don't recall the total now. I don't think it was ever totalled up prior to the supervision being imposed on the Union.

Q. You mean you kept no record of the amounts paid?

A. Yes, sir, records were kept of the amounts paid, and they were all paid by check, but as far as the complete total was concerned, I don't recall seeing a total for the entire period of time.

Q. How were the Maritime Union pickets paid?

A. The pickets were not paid in the Maritime Trades (623) There were only a few, I would say, probably five or six at various times who were paid the same amount of picket expense as our own pickets.

Q. How were they paid? By check also?

A. Yes, they were paid by check.

Q. To the order of the pickets?

A. I believe so. Yes, I believe in every instance. I am not just certain now whether any was handled differently, but I think in every instance they were paid to the order of the pickets.

(Mr. Wolfe produced some papers.)

THE COURT: If you are going to show them to the witness, have them marked.

BY MR. WOLFE:

Q. Mr. Underwood, I show you a check dated June 25, 1952, which I will ask be marked Defendant's Exhibit No. 8 for identification.

(Check dated June 25, 1952 was marked Exhibit D-8 for identification.)

And a check dated July 16, 1952, which I will ask to have marked Defendant's Exhibit 9 for identification.

(Check dated July 16, 1952, was marked (624) Exhibit D-9 for identification.)

And a check dated August 7, 1952, which I will ask to have marked Defendant's Exhibit No. 10 for identification.

(Check dated August 7, 1952, was marked Exhibit D-10 for identification.)

And I ask you, in the first place, whether your signature appears on all of those checks.

A. Yes, sir, my signature and that of Michael F. Mogan, Treasurer of the Union.

Q. Those checks were drawn upon funds of Local Union 542?

A. Yes, sir.

Q. And they are drawn all three to the order of the same payee?

A. Yes, sir.

Q. And who is the payee?

A. Stephen Cardulla, President of the Maritime Trades Department.

Q. And the check which is marked Defendant's Exhibit No. 8 is for $2,000, is it not?

A. Yes, sir.

Q. And the check which is marked Defendant's Exhibit No. 9 is also for $2,000?

(625) A. Yes, sir.

Q. And the check which is marked Defendant's Exhibit No. 10 is for $1,000?

A. Yes, sir.

Q. Will you tell me the circumstances under which these checks were drawn and delivered to the payee?

A. Yes, sir. The pickets from the Maritime Trades Coun

cil had considerable expense, such as their transportation from job to job, their lunches and coffee, rain gear, purchase of gasoline and oil, and so forth, for their cars, and transportation from the Maritime Trades Council out to the various jobs. It was understood, and we agreed and the Executive Board agreed that they would be compensated for the expense they incurred in doing picket duty.

As a result of that, Mr. Cardulla would make payments to these people and get a receipt from them for those payments. He kept them in his office, and from time to time we were permitted to inspect them and then would make a check payable to him covering the costs.

Q. Can you also find the place in the minutes of the Executive Board meeting to which you refer in which such action was taken and let me know which minutes they are?

(626) A. There were many things that were not included in the minutes of the Executive Board. These things were discussed time and time again, sir. I don't know whether it is included in it or not. However, we were authorized to conduct a strike.

Q. You say there were many things that occurred at meetings that were not included in the minutes. Does that apply to membership meetings as well as to Executive Board meetings?

A. Oh, many things are discussed at meetings, certainly, that aren't included in the minutes, Mr. Wolfe. Meetings last for three or four hours, and you can't include everything.

Q. Who determines what should be included in the minutes of an Executive Board or membership meeting after the meeting has taken place?

A. The Recording Secretary is an elected official, and he is the one who makes the notes and determines what goes into the minutes. However, that was so for a period of years, and it was only in the past year, I believe, the last year, that is, of 1951 to 1952, that I established the practice

of discussing the minutes with the Recording Secretary, because many things had come up at meetings, (627) on the floor at meetings, where members had said that this question had arisen at previous meetings, and I had no recollection of it. Therefore, anything of a controversial nature I felt should be included in the minutes, some reference to it, and I used to discuss these things with the Recording Secretary.

Q. Isn't it a fact, Mr. Underwood, that you wrote almost all of the minutes of both Executive Board meetings and membership meetings?

A. No, sir; no, sir. Miss Gallagher. It was customary and had been for many years prior to local autonomy for Miss Gallagher to take care of the minutes, to type up minutes. In fact, I rarely had occasion to look at minutes up until these questions started to arise on the floor.

Q. Mr. Underwood, in what room were the meetings of the membership of Local 542 held during July and August? Where were they held?

THE COURT: I assume you mean 1952?

MR. WOLFE: 1952, yes, I am sorry.

A. I believe all of them were held in Town Hall.

BY MR. WOLFE:

Q. Well, do the minutes of those meetings accurately (628) reflect where they were held?

A. I should think they would.

Q. So that if the minutes state that they were held at the Broadwood Hotel, you wouldn't have any doubt that that is where they were held, would you?

A. No, sir, I would not.

Q. And when they were held at the Broadwood Hotel, in what room were they held?

A. Well, at various times we used two different rooms in the Broadwood Hotel. One was the large ballroom, and another one was a room on the same floor, though somewhat smaller.

Q. The one you refer to as the large ballroom is the one that is known as the Crystal Ballroom, isn't it?

A. Yes, sir.

Q. What is the seating capacity of that room?

A. I don't recall now.

Q. It was between six and seven hundred, wasn't it?

A. I just don't remember, sir.

Q. What is the other room that you refer to where some of the meetings were held?

A. It was a room across the hall or corridor from the ballroom. It has a name, of course, but I don't (629) remember the name of it now.

Q. And that is a much smaller room, is it not?

A. Yes, yes, it is a smaller room.

Q. You testified at page 316 of the record that there were as many as 3,000 members at one of the meetings and that there were close to that when other meetings were held. There could therefore have been no such numbers at any meeting held at the Broadwood Hotel, could there?

A. Oh, no, sir, not at the Broadwood. They were at Town Hall.

Q. You testified on direct examination with respect to Mr. Carter and his participation in the negotiations with the Contractors Association, and you testified that he said that he had received authority from Mr. Maloney to write and sign a contract for Local 542. Do you recall any such testimony?

MR. FREEDMAN: May I have that page, please?

BY MR. WOLFE:

Q. Do you remember giving such testimony?

A. Yes, sir.

MR. WOLFE: The testimony appears on page 335 of the record.

(630) BY MR. WOLFE:

Q. You called Mr. Maloney on the telephone and reported what Mr. Carter had said to you, did you not?

A. Among other things, yes, sir.

Q. And did Mr. Maloney deny that he had given Mr. Carter any such authority?

A. Yes, he did.

Q. And it was during that discussion that Mr. Maloney said, did he not, that you better come out to Chicago so that he could talk to you about the situation?

A. Yes, sir.

Q. And when you went out to Chicago on, I think you said July 27, and you and Mr. Maloney discussed the situation, was there anyone else there at the time?

A. No, sir, there was not. We were in the office of Local 150.

Q. And then it was during that discussion, was it not, that you had with Mr. Maloney on the 27th that you suggested he call Mr. Carter and ask Mr. Carter to come out to Chicago?

A. Yes, sir.

BY THE COURT:

Q. Was that your exact testimony or didn't you testify you asked him to call Carter and put you on an extension?

(631) A. Yes, sir.

BY MR. WOLFE:

Q. Now, which is correct?

A. Well, that was the first request, that he call Mr. Carter

and I get on the extension so we could have a three-way conversation, and Mr. Maloney said, "No, I will call him and tell him to come out here. I would rather have him out here."

Q. I call your attention to your testimony on June 13, 1955. I am reading from page 437 of the testimony, at the top of that page, the conference you referred to.

MR. FREEDMAN: What page was that, please?

MR. WOLFE: Page 437.

BY MR. WOLFE:

Q. Reference was made in that page, on the top of that page, to the conference you had with Mr. Maloney on the 27th, and then I asked you:

"What conversation did you have with him then?"

You said,

"Well, I first told him what had taken place in here, and he said that that wasn't his understanding of the situation and that ——

"Q. What did he say his understanding of (632) it was?

"A. He didn't say. He said he had gotten a different story than that from Mr. Carter and Mr. Halloran.

"So I asked him to call Mr. Carter while I was there and see what he said about the story I had just related to Mr. Maloney, and Mr. Maloney did call him on the phone.

"As a result of the conversation, Mr. Maloney suggested that Mr. Carter come to Chicago, and he did come to Chicago and arrived there the following day."

Do you recall that testimony?

A. Yes, sir.

Q. And is that what occurred?

A. Yes, sir, substantially, except that I first suggested that we get on the extension and all of us talk.

That wasn't all that occurred that day, Mr. Wolfe.

Q. Did I ask you anything about what else occurred, Mr. Underwood?

A. I thought you might have said is that all that occurred that day. I am sorry.

* * * * * * * * *

(633) Q. Mr. Underwood, you were concerned in Chicago, I believe you testified, with Mr. Maloney, Mr. Halloran and Mr. Carter on July 30 and July 31, is that correct, of 1952?

A. No, I believe it was the 29th and 30th.

Q. The 29th and 30th?

A. Yes, sir, that is my best recollection.

Q. During those negotiations you had and Mr. Maloney had, I assume, before each of you a copy of the contract that you had negotiated with the independent contractors, did you?

A. I had a copy. I don't believe Mr. Maloney had a copy in front of him until he looked at my copy. Mr. Halloran, I am sure, had a copy. He was referring to a copy, yes, sir.

Q. Well, you started in during your negotiations with the beginning of that contract and went over it paragraph by paragraph, did you not?

(634) A. I discussed, yes, each paragraph—I believe all of them were covered—with Mr. Maloney and in the presence of Mr. Halloran. Of course, I had discussed it previous to that with Mr. Maloney also when Mr. Carter was there.

BY THE COURT:

Q. Did you tell me that in your direct examination or didn't you?

A. I don't recall whether the question was asked, sir.

THE COURT: Very well, go ahead.

BY MR. WOLFE:

Q. And as paragraphs were agreed upon were they marked O.K.?

A. No, sir.

Q. They were not?

A. No, sir. The only purpose was to acquaint Mr. Maloney with the provisions of the independent agreement.

Q. Is it not a fact, Mr. Underwood, that practically every provision of the contract that you had negotiated with the independent contractors was discussed during those conferences and that as the result of Mr. Maloney's discussion with respect to them, Mr. Halloran agreed to a number of those provisions which he had never before (634a) agreed to?

A. He did not agree to anything, Mr. Wolfe, in the independent agreement.

Q. What agreement was made, if any, as the result of those discussions in Chicago between Mr. Halloran and Mr. Maloney? Did you reach any agreement on any subject?

A. The only agreement made was that we were to return to Philadelphia and continue negotiations on the basis of the Union's original demands.

(635) Q. Now, I call to your attention the minutes of the meeting of the Executive Board of local union held on August 4, 1952—I show you a document consisting of four pages purporting to be the minutes of a meeting of the Executive Board of the International Union held on August 4, 1952, which I will ask to be marked as Defendants' No. 11 ——.

(Minutes of the meeting of the Executive Board of local union held on August 4, 1952, were marked Exhibit D-11 for identification.)

BY MR. WOLFE:

Q. —and ask whether you can identify that as the minutes of that meeting.

A. Yes, sir. This appears to be a copy of the minutes of that meeting.

Q. Who drafted the minutes of that meeting?

A. Mr. Lavery and I participated in the—dictating the minutes from his notes made as recording secretary of the meeting.

Q. Were they dictated in the office of the union?

A. Yes, sir.

Q. Now, reference is made on the second page in the last paragraph to the meetings in Chicago, and I would ask you to read what appears in that paragraph, please.

(636) A. The last paragraph did you say, sir?

Q. Yes.

A. "Following this the parties were then to discuss the additional demands of the Union and to consider the arbitration of some of the more difficult issues. This was agreed to and as a result, a meeting was held with Contractors' representatives on Friday, August 1, at 1:30 P. M. at the Broadwood Hotel. The Employer Representatives disagreed with this suggestion as a basis for discussion and the meeting lasted only about 20 minutes ——"

Q. Excuse me. That is not what I asked you to read. I believe the paragraph begins here.

A. "During the meetings in Chicago, Harry Halloran had insisted on changes, beneficial to the Contractors, in our basic independent agreement. President Underwood reported that upon his return to Philadelphia Thursday, July 31 a call was received from General President Maloney suggesting the terms of a settlement. The terms suggested at that time were:

"'Acceptance by the Contractor Associations of the independent contract as currently in effect and unconditional transfer of the monies in the Old Welfare Fund to the new Welfare Fund.'"

(637) Q. And what followed?

A. That doesn't end it, if Your Honor please.

Q. And what follows?

A. "Following this the parties were then to discuss the additional demands of the Union and to consider the arbitration of some of the more difficult issues. This was agreed to and as a result, a meeting was held with the Contractors' Representatives on Friday, August 1 at 3:30 P. M. at the Broadwood Hotel. The Employer Representatives disagreed with this suggestion as a basis for discussion and the meeting lasted only about 20 minutes with the understanding that both parties would talk to President Maloney regarding this situation."

Q. Yes. Now, may I have it, please. Now, was that the agreement which is referred to in the minutes which was reached by you and Mr. Halloran and Mr. Maloney in Chicago?

A. No, sir.

* * * * * * * * *

(639) Q. Did you in Chicago, Mr. Underwood, agree with Mr. Halloran that the contractors associations would accept the independent contract as currently in effect and that they would agree to the unconditional transfer of the moneys in the old welfare fund to the new welfare fund?

A. No, sir. There was no such agreement reached.

Q. Your testimony is that although no such agreement was reached in Chicago, the next day Mr. Maloney said there was such an agreement reached; is that correct?

A. He did later say that; yes, sir.

Q. And didn't you report to the meeting, as indicated by these minutes, that you called Mr. Maloney the next day upon your return to Philadelphia? Did you?

* * * * * * * * *

(642) THE WITNESS: I came back to Philadelphia and after arriving in Philadelphia I received a call from Mr.

McDonald. He asked me at that time what that proposal was I had in Chicago, had drawn up, and I explained to him, as briefly as I could over the phone, just what it did contain. He suggested then that we submit this proposal to the con- (643) tractor associations, to call a meeting with the contractors associations' representatives and submit the proposal that I had had at Chicago, and I agreed to that ——

Q. And the phrase ——
A. —and agreed—that is what it means—it was agreed to.
Q. And "this was agreed" is what you mean by that?
A. Yes, sir.

THE COURT: Now, let me have the minutes, Mr. Freedman. Where is it, on the front page?

MR. WOLFE: On the second page.

THE COURT: I agree with you, Mr. Freedman, that the minutes do speak for themselves, and I am a little, shall I say, bewildered by the explanation given by Mr. Underwood.

BY MR. WOLFE:

Q. Mr. Underwood, you came back from Chicago on the 30th, was it, or on the 31st of July?
A. The 31st.
Q. And did you see Mr. McDonald when you came back from Chicago?
A. I believe I saw him that day. I am not sure of it at the moment.
Q. Didn't you tell him that everything—in effect that (644) everything had been settled in Chicago?
A. I told him that it had been settled, that we were to continue to negotiate on the basis of the union's original de-

mands, that Mr. Carter would no longer be permitted to come in.

Q. Now, I call your attention to Mr. McDonald's testimony on page 360 and ask you whether this refreshes your recollection as to what you said when you came back from Chicago. I am reading from page 360 of Mr. McDonald's transcript of Mr. McDonald's testimony. You testified—and I am quoting—

"The general president had Roy Underwood with him in Chicago for a period of three days ——"

MR. FREEDMAN: Who testified?

MR. WOLFE: I mean Mr. McDonald again. I am sorry. I mean Mr. McDonald testified.

"The General President had Roy Underwood with him in Chicago for a period of three days. Underwood came back from there as happy as a bug in a rug, came into the office and he told the agents that everything was fine, everything was satisfactory. What happened, what caused it to blow up—it blew up and was all over again the next day."

(645) Do you recall making such statements to Mr. McDonald and to the men in the local office after you returned from Chicago?

A. I recall—if I talked to Mr. McDonald that day I recall certainly telling him that it was very satisfactory inasmuch as we had—the International was not going to interfere any further nor Mr. Carter with the negotiation between the union and the contractors.

Q. And that is what you meant by saying to Mr. McDonald that everything was fine, everything was satisfactory?

A. Well, I was very well satisfied, yes, sir, about it, that development.

Q. Now, you had a conference with Mr. Halloran the day after you came back from Chicago, didn't you?

A. We met with the contractors' negotiating committee on August 1, I believe. That is, our committee and their committee met.

Q. And what did you tell Mr. Halloran at that conference the next day would be the basis for any further discussion between you and the contractors' representatives with respect to this contract?

A. Well, I believe I told him that we were to continue negotiations. I simply made it as a statement to the other members of the negotiating committee. We were ready to (646) proceed with negotiations on the basis of the union's original demands. I think—I think at that time that I also mentioned the fact that this proposal that had been submitted at Chicago was to form the basis for negotiating.

* * * * * * * * *

Q. You testified—and I am quoting—

"I believe I talked to Mr. Halloran on the telephone."

The quote was:

(647) "Q. That was the last meeting you had with them, was it?"

And you answered:

"I believe I talked to Mr. Halloran on the telephone and told him that we couldn't come to any agreement on the basis of the suggestions he had made at the Conference, but that we were anxious to continue the negotiations on the basis of the original demands made by the union, and Mr. Halloran said that he wasn't interested in continuing negotiations on that basis."

Do you remember that testimony?

A. Yes, sir. I recall that.

Q. In other words, after these conferences you had with Mr. Maloney and Mr. Halloran in Chicago, the next day you told Mr. Halloran that you would be willing to continue negotiating on the basis of the contractors associations agreeing to the safety code, the pension plan, to the pay-

ment retroactive for a period of the 25-cents-per-hour increase, in addition to that to a further increase of 5 per cent in order to achieve parity with the New Jersey rates, and you injected again all of these demands into the negotiations, didn't you?

A. Demands were never injected again into the negotiations.

Q. Did you understand the question?

A. I don't recall this conversation.

Q. Did you understand the question, Mr. Underwood? I asked you whether it was not a fact that when you had the (648) last contact with Mr. Halloran the day following your negotiations in Chicago your demands were that the negotiations continue on the basis I have stated. Is that a fact or isn't it a fact?

A. I don't recall the conversation but I believe it is a fact; yes, sir.

Q. And a few days later Mr.—or, the letter which has been identified as Exhibit P-47—or, no—P-46, bearing the signature of Mr. McDonald, was sent out by the—by you, was it not?

MR. FREEDMAN: What exhibit is it?

MR. WOLFE: 46.

THE WITNESS: It was mailed from the union office, yes, sir ——

BY MR. WOLFE:

Q. Who wrote that?

A. —where Mr. McDonald had his office.

Q. Who wrote that letter, Mr. Underwood?

A. Mr. McDonald wrote the original draft of the letter.

Q. Well, now, I call to your attention this testimony by Mr. McDonald and ask you whether it refreshes your recol-

lection as to who wrote it and the circumstances under which it was written.

MR. FREEDMAN: What page?

(649) MR. WOLFE: And I am referring to page 338 and 9 of the transcript of Mr. McDonald's deposition. Mr. Freedman asked Mr. McDonald this question:

"Q. And what did you do in regard to that attempt?"

I better go back a little farther to this question:

"Q. Well, did you make an attempt"—this is from page 337—"Well, did you make an attempt, let me put it this way—did you make an attempt to bring together the contractors with the local after that letter?

"A. Yes.

"Q. And what did you do in regard to that attempt?

"A. I was in the office with Underwood, and this is the very, very, very best of my recollection, and I want to be very, very honest in the answer. I was sitting in the office with Underwood, and out of a clear sky he suggested to me that he had talked with Bob Hudson, the secretary of the Pier and Dock Builders Association, and that it was Bob Hudson's thought that the members of the Executive—the Board of Directors of the AGC were not intimately familiar with how the negotiations were progressing, and that Bob Hudson (650) thought that if I would send a letter to the Board of Directors of the AGC inviting them to come in, that it would probably work out all right, and that I could draw up a little letter, that he would draw up a little letter, take it over with you, and check with it, and come over, and if I could come in the next night we would see how the thing would work out.

"So, all right with me. I was perfectly satisfied and happy to do anything that would bring the thing to any kind of a successful conclusion.

"So I drew up a little letter on a pad like this, of yellow paper, with about six or seven lines. Addressed—I was

asked, well, if I would put it on my letterhead. I had no objection to putting it on my letterhead. I was satisfied to do anything to be helpful to the situation.

"I drew up a little thing in seven little lines, and if you remember, you came out of nowhere. I don't know where. The door didn't slam outside ——"

And Mr. Thomas said:

"What do you mean by 'you'?"

And the witness, you, Mr. Underwood, as the witness, said—I mean Mr. McDonald said:

"I mean Mr. Freedman. When I came in at 6 (651) o'clock the next night. I had a little bit of a memorandum on a yellow sheet of paper and pencil. And Underwood had this letter here, and the only part of that letter that is mine, actually mine, my composition, is where I would be—in the bottom of the letter, that I would be at the Broadwood Hotel if the contractors should call."

Do you recall Mr. McDonald giving that testimony?

A. Yes, sir. I recall him giving the testimony, but that doesn't refresh my recollection as to the circumstances surrounding it, sir.

(652) Q. Does it refresh your recollection to the effect that the only part of this letter which has been marked Plaintiffs' Exhibit No. 46 that was his composition was the last paragraph?

A. No, sir. It refreshes my recollection to this extent: I had lunch with Mr. McDonald on the day this letter was written. We had been discussing for a long period of time the strike situation and the fact that the contractors were unfamiliar with the position being taken by their representatives on the negotiating committee. I believe I did mention to him that day when we were having lunch that I had talked to Mr. Hudson of the Wharf and Dock Builders Association. However, I am not certain of that. I discussed it with many people.

He decided then that he was going to compose a letter

and told me that he was going to compose a letter—and thought it was a good idea—to send out to the directors, board of directors, of the various associations.

We went back to the office. He went back to his office and he started working on this draft of a letter. He came in on one or two occasions and read off to me what he had completed at that time of this letter and asked me how it sounded. I told him it sounded very good to me.

He would go back again, and he came back—well, (653) the last time he came in with the letter completed, written in longhand. He came in and read it off again, and he suggested then that we call Mr. Freedman, our lawyer, and ask if he would come over and go over the letter too. "Perhaps," he said, "he will make some suggestions that will improve it."

I called Mr. Freedman, and he came over immediately. We went over the letter together, and the only changes that I remember, that I can recall now that Mr. Freedman ever suggested, I remember one word. He suggested something in this letter, and Mr. Freedman said, "Well, I would suggest you put 'strongly suggest', instead of just leaving it that way." He might have suggested a couple of other things, but that is the only one I can recall now.

That letter as completed is the draft of the letter that Mr. McDonald wrote up himself in longhand.

Q. On August 11, a few days later, you received an order from Mr. Maloney to terminate the strike, did you not?

A. Yes, sir. It was delivered by Mr. Wharton.

Q. And do you recall about when that was delivered?

A. It seems to me it was in the afternoon possibly about 2:30, somewhere around that time.

Q. And I believe you testified you then went down to Mr. Freedman's office?

A. I called Mr. Freedman, yes, and made arrangements to (654) meet with him. I am not sure whether I made other calls at that time or not.

Q. And who else was there? You were there how long that night, if you recall, in Mr. Freedman's office?

A. Practically all night.

Q. And do you remember who else was there?

A. Oh, there were office personnel. There were other people around.

Q. I mean other representatives of Local 542. Were there any?

A. It is my recollection that during the evening some members of the Executive Board came in and then left.

Q. Do you recall who they were?

A. No, sir, I do not. I called the Executive Board members on the telephone and discussed this with them throughout the evening. Whom I talked to on the telephone and who came into the office, I can't recall at the moment.

Q. You have no recollection of any single person, any other person who was there from Local 542, other than yourself?

A. I can't now distinguish in my mind which I talked to on the telephone and which I talked to in Mr. Freedman's office, if any. I just don't recall them coming in.

* * * * * * * * *

(656) Q. Then, to continue with the question, I ask you whether this complaint is the complaint which was drafted on the evening or night of August 11 in Mr. Freedman's office, to which you are referring.

A. Yes, sir, this appears to be the complaint.

MR. WOLFE: So that we won't mislay any of these papers in that file, may I give the rest of the file back and retain this original for a moment and ask some questions about it.

BY MR. WOLFE:

Q. Who supplied the information to Mr. Freedman upon which the allegations of this complaint were based?

A. I supplied a great deal of it. Of course, he discussed it with other members of the union and members of the Executive Board, undoubtedly.

Q. At the meeting in Mr. Freedman's office?

A. At various times, I presume.

Q. During the meeting, you mean? During the evening and (657) night of August 11?

MR. FREEDMAN: What meeting are you talking about, Mr. Wolfe?

BY MR. WOLFE:

Q. Do you know what I am referring to, Mr. Underwood?

A. We had no meeting, sir.

Q. Well, then, during the conference or conferences at Mr. Freedman's office during the afternoon and evening or night of August 11, when, as I understand it, this complaint was prepared, I would like to find out from what sources information was obtained from which these allegations were alleged.

A. Well, certain information could have come to Mr. Freedman over a period of time when things that are alleged in that complaint had occurred. I don't recall just how much information he got that particular evening or afternoon from others, if any.

Q. Had you been discussing for some time prior to August 11 the preparation of a complaint of this kind?

A. No, sir, but conditions in the union were discussed quite often, of course, with Mr. Freedman and among other members.

Q. You signed the affidavit to the complaint, did you not?

A. Yes, sir, I did.

(658) Q. And that appears to have been signed on August 12, 1952?

A. Yes, sir.

Q. When on August 12 was the affidavit to this complaint signed by you?

A. I can only place the time by saying it was within a couple of hours after the Executive Board meeting adjourned ——

(659) BY THE COURT:

Q. What time of day?

A. I just don't recall the hour we adjourned. I believe it was about 9:30 A. M., and it must have been signed within a couple of hours after that, if not sooner.

Q. Either just shortly before or shortly after noon of that day; is that it?

A. Yes, sir.

BY MR. WOLFE:

Q. Did you take the complaint down to the Court and file it?

A. No, sir, I believe not.

Q. I show you a document consisting of two pages, Mr. Underwood, purporting to be the minutes of a meeting of the Executive Board of the union held on August 12 and ask that it be marked as Defendants' Exhibit No. 12 for identification.

(Minutes of special meeting of Executive Board held on August 12, 1952, were marked Exhibit D-12 for identification.)

I show you Exhibit D-12, Mr. Underwood, and ask you what that is.

A. This is a copy of the minutes of the special meeting of the Executive Board of the International Union of Operating Engineers held August 12, 1952, at 8:00 A. M., in the Broadwood (660) Hotel, Broad and Wood Streets, Philadelphia.

Q. Was that meeting attended by the officers whose presence is recorded in the minutes?

A. I would assume so. I don't remember now just who was present.

Q. At that meeting you discussed, did you not, the order from General President Maloney which had been received the day before, directing Local 542 to terminate the strike?

A. Yes, sir, I brought it to the attention of the Executive Board and discussed it with them.

Q. Did you recommend that the local follow and comply with the order of the General President?

A. No, sir, I did not.

Q. Did you recommend that the local refuse to comply with the order of the General President?

A. I don't think any such recommendation was made by anyone present. The entire Board, the entire number of members of the Board present, were very enthusiastic about taking some action to prevent the imposition of this order on the membership.

* * * * * * * * *

(661) Q. Now, the minutes of that meeting which you have before you report the adoption at that meeting of a resolution by the Executive Board, do they not?

A. Yes, sir.

(662) Q. Will you read the resolution?

A. "That the Business Manager proceed forthwith with any and all legal action necessary to restrain anyone from enforcing the less favorable contract on the membership of our Local Union, and that our Local Union decline to comply with the order of General President Maloney as set forth in his letter of August 11, 1952."

Q. Who prepared the minutes of that meeting?

A. Those minutes were prepared, as I recall, immediately after the meeting or possibly the following day by both Mr. Lavery and myself.

Q. Who spoke against the adoption of the resolution at that meeting, if anybody?

A. Nobody spoke against it.

Q. No one spoke against the adoption?

A. No, sir.

Q. I call your attention, Mr. Underwood, to the testimony of Mr. McDonald at page 347 and 348 of the transcript and ask you whether this refreshes your recollection as to what occurred at that meeting.

Referring to that meeting, Mr. Freedman asked Mr. McDonald, at the top of page 347:

"Q. Did you attend it?

"A. Yes. I would like to look at the (663) minutes of that thing, if you have them available. If the minutes I saw, and the length of time it took to get that thing passed—I talked there and so did Mike Mogan, but nothing appeared of what I said in the minutes, but there is two or three pages of minutes, and it was only a meeting of about 15 minutes at the outside. How the hell so much could be said and done in 15 minutes.

"Q. I thought you said you didn't see the minutes.

"A. Huh?

"Q. Who kept the minutes?

"A. Underwood. Underwood didn't take them down, but Underwood wrote them after.

"Q. Are you sure?

"A. Oh, gees, I saw him write them many a time in the office.

"Q. Did you see him write those minutes?

"A. No, I didn't see him write those minutes, but I got a statement on it.

"Q. From whom?

"A. From Lavery, who took the minutes.

"Q. Did he show you a copy of the minutes?

"A. I don't know whether he showed me a copy, but I saw a copy.

(664) "Q. Does he have them?

"A. No, I don't think he has them. No, I saw a copy around 542's office, and I was very much shocked there, too, when I saw them."

Do you recall that testimony by Mr. McDonald?

A. I recall the testimony.

Q. Does that refresh your recollection as to who, if anyone, advocated rejecting the resolution that is reported to have been adopted by that meeting?

A. I recall that nobody objected to the resolution, and Mr. McDonald was not present at the meeting. He had been ordered out of town, he told me, by Mr. Maloney.

Q. Now, at that meeting was there any discussion as to the remedies under the Constitution that the local could adopt if it disagreed with Mr. Maloney's order to terminate the strike?

A. I don't know. I suppose something did come up at the meeting. I don't recall what it was, but it was common practice for the Executive Board to discuss remedies and lack of remedies under the Constitution.

Q. Did you advocate following the remedies which the Constitution afforded to question an order from the General President?

A. I certainly did not, not on that occasion.

(665) Q. The hearing upon that complaint which has been part of the Court file in case No. 14071 was fixed by Judge Grim for August 14, wasn't it?

A. I believe that was the date, yes, sir.

Q. Did you attend the sessions with respect to that case before Judge Grim?

A. Yes, sir, I did.

Q. Did you participate in the negotiations that took place that resulted in a stipulation ultimately?

A. To some extent, yes, sir.

Q. Did you confer with Judge Grim and Mr. Maloney at the time when reference was made to invoking supervision over the affairs of the local?

A. Yes, sir, at one time I did.

Q. And did Mr. Maloney say in the presence of you and Judge Grim that he intended to issue an order invoking supervision, and did Judge Grim ask whether he would defer it until after the men went back to work, and Mr. Maloney said he would at Judge Grim's request defer issuing the order until after the men returned to work?.

A. I don't recall him referring to an order of supervision. He said that he was going to put a supervisor in temporarily until this case came before the Board in New York, but he said also that under no circumstances would he disturb me.

(666) Q. You testified, Mr. Underwood, at page 403 of the record in this case as follows:

"Q. Were you suspended pursuant to this order on August 19, Mr. Underwood?

"A. Yes, sir."

Do you remember that testimony?

A. Yes, sir.

Q. What did you mean by the statement that you were suspended as a result of the order of Mr. Maloney of August 11?

A. The order stated that all officers were suspended.

Q. Did you continue to draw a salary after August 11?

A. Yes, sir. I continued to appear at the office, yes, sir, and offer any assistance I possibly could.

Q. And you were paid a salary until how long? When did you last receive a salary from the local union?.

A. Well, until the Executive Board of the union determined that I was guilty, and I believe that was on the 27th of September.

(Discussion among counsel.)

Q. Mr. Underwood, I have asked your counsel to produce the original of a letter which is dated September 5, 1952, and at his request I am showing you what purports to be a copy of that letter, and I will ask that it be marked Defendants' (667) Exhibit No. 13.

(Letter dated September 5, 1952, from Hunter P. Wharton to Roy J. Underwood, was marked Exhibit D-13 for identification.)

* * * * * * * * *

Q. Will you read the letter, please?

A. "Dear Mr. Underwood:

"In conversations that I have had with you since August 19, 1952, I have urged you to cooperate in the forthcoming arbitration before Dr. Taylor by submitting all the data that you have compiled (668) supporting demands of the Union, and by appearing and testifying in person at the arbitration. At first you offered full cooperation in these matters, but a few days ago you announced that you could not testify, and you gave as your reason that the office of Montgomery, McCracken, Walker and Rhoads, which has been retained by me as International Supervisor cannot adequately represent the Union because it represented the International and Mr. Maloney in the equity proceedings in the Federal Court, at which time the interests of the Local Union on the one hand, and the International and Mr. Maloney on the other, were adverse. As of yesterday, you agreed to submit the data you have compiled, but you still refused to cooperate by appearing at the arbitration and testifying voluntarily for the reason heretofore mentioned.

"I have no alternative but to submit this written demand upon you that you appear at the arbitration and testify because if you fail to do so, you may jeopardize the interest of the Local. The reason given by you for not appearing in person at the arbitration and testifying voluntarily is totally without substance. The firm of Montgomery, McCracken, Walker and Rhoads is in every sense qualified to (669) advance the interests of the Local, but it will be embarrassed in the performance of its service unless you fully cooperate, because, as you know, we are pressed for time in this matter and it must have the fullest cooperation from you as

well as from everyone else, as it hopes to be prepared in time for the arbitration, which begins this coming Tuesday, September 9, 1952.

"Furthermore, you and your attorney, Mr. Freedman, agreed to the terms of the arbitration and you pledged to Judge Grim that you would cooperate in the arbitration. You are directly violating that pledge of cooperation.

"Very truly yours,
Hunter P. Wharton,
Supervisor."

Q. Now, Mr. Underwood, did you actually at any time attend any of the meetings with Dr. Taylor as arbitrator?

A. No, sir.

Q. Did you advise other members of Local 542 not to appear in connection with those meetings and testify or take part in them?

A. I don't recall advising others not to appear.

Q. Did you ever suggest that they should not?

(670) A. I don't recall that either, but I might have. We discussed it with others.

Q. Did you ever advise or suggest to the other members who were formerly members of the Executive Board that they not cooperate with Mr. Wharton in any respect in connection with the conduct of these arbitrations?

A. No, sir, I don't recall advising any members of the Board not to cooperate.

Q. Did you suggest it to them?

A. No, sir.

Q. Would you say that you continued to be on the payroll of Local 542 until the end of September of 1952?

A. Yes, till about the date the decision was handed down by the Board in New York, September 27.

Q. When was it, Mr. Underwood, that you removed papers and documents and files from the office of Local 542 which have since been in your possession or under your control?

A. That began early in 1948 and continued from time to time up until August 19 or August 18, 1952.

Q. Well, was there a time in August, 1952, when you cleared out the contents of your office and moved them to your home?

A. No, sir, I did not clear out the contents of the office. I did take certain documents and copies of letters, and so forth.

(671) Q. And were you assisted in that by others?

A. No, sir. No one that I recall assisted me except that my secretary made copies. I don't know just what you mean by "assisted". She made copies of certain correspondence or other matters in the office, minutes, and so forth.

Q. Did you take with you the charter of Local 542?

A. No, sir, I didn't touch it.

Q. Did you ever remove the charter of Local 542 from its office?

A. I believe so, yes, to have it photostated.

Q. To have it photostated?

A. Yes, sir.

Q. When was that?

A. I don't recall now. It is very hazy to me as to just when it was done.

Q. Who did the photostating?

A. I don't recall that either.

Q. And after it had been photostated what did you do with the charter?

A. It was returned to the office.

Q. Where did you put it?

A. I would only assume that I handed it to Miss Gallagher to put away, but I don't remember it.

* * * * * * * * * *

(672) Q. Mr. Underwood, you attended the hearing in Washington before Mr. Carter in August, 1956, did you not, with respect to the continuance of supervision?

A. Before Mr. Carter and Mr. Thomas; yes, sir.

Q. And you have seen the copy of Mr. Carter's report of that hearing?

A. No, sir. I don't recall seeing a copy of it.

Q. You have never seen a copy of Mr. Carter's report of that hearing?

A. I saw a copy of the charges that came out of the hearing, but ——

Q. Did you read over the answer filed to the complaint in both these cases, the answers to the complaints?

A. I don't believe I did; no, sir.

(673) Q. Well, I show you a copy of the report and ask you whether—will you look at it and tell me whether you are familiar with that report.

(Witness examines document.)

Q. Have you seen this report before, Mr. Underwood?

A. No, sir; I don't recall seeing this.

Q. Well, then you can't identify it, can you?

A. No, sir.

Q. Now, Mr. Underwood, at the meeting in Washington on August 26 conducted by Mr. Carter as hearing officer did Mr. Carter read the president's, the general president's letter appointing him as hearing officer?

A. He might have, but I have no special recollection of having read it. It might have been Mr. Thomas. I am not sure that it was read. It might have been.

Q. Did you act as the spokesman for the group who had accompanied you to the hearing from Philadelphia?

A. Well, in a sense, I suppose, yes. I was the first one asked any questions by Mr. Thomas.

Q. Did Mr. Dawson suggest then that the letter, Mr. Maloney's letter invoking supervision, be read?

A. I don't recall that; no, sir.

Q. And did you then read the letter invoking supervision?

A. No, sir.

(674) Q. Do you remember any discussion at that hearing as to the employment of members of the Maritime Trades Council as pickets during the strike?

A. Yes, sir. I remember that Mr. Thomas asked me two or three questions about that.

Q. And did he ask you how many pickets had been secured? Do you recall that?

A. I don't recall that he asked me that.

Q. Do you remember that ——

A. I only recall that he asked me how much money I think was paid.

Q. Do you remember that you refused to tell him?

A. Yes, sir, unless we could have a record made of the proceedings.

Q. Do you remember that you stated at the hearing that the general president's order of August 11 directing the local to terminate the strike and his order of August 19 invoking supervision were both illegal?

A. I don't recall saying that; no.

Q. Do you remember reading at that meeting the averments of the bill of complaint which had been filed in this court on August 12 in Case No. 14071?

A. No, sir.

Q. That is, you don't recall having read the averments (675) of that bill of complaint?

A. I am quite certain that I didn't. I didn't have the bill of complaint with me.

Q. Did you say at that hearing that you felt a lawsuit was necessary to resist the general president and that you gave the facts to Mr. Freedman upon which the suit was based?

A. No, sir.

Q. Did you say at that hearing that the allegations regarding conspiracy and violation of the Sherman Act and the Clayton Act and the linking of the contractors and J. Howard McGrath in a lawsuit was the attorney's idea based upon the facts which you had given to him?

A. No, sir. I did not.

Q. Do you remember being asked whether in your opinion the charges made against the general officers of the

International Union in that lawsuit were—you were asked whether in your opinion they were commendable or creditable to the International officers?

A. No, sir. I do not.

Q. And when you were asked that question, if you were, do you remember saying that you would like to know what was meant by the use of the word "creditable"?

A. No, sir. I do not.

(676) Q. And do you remember when that question was asked you you declined to answer any questions thereafter unless a record were made of the questions and answers?

A. Not at that point; no, sir. I had asked that previously.

Q. Do you remember that you were asked whether an assessment had been placed by you against the members of Local 542 and you refused to answer the question?

A. No, sir; I don't recall that.

Q. Do you remember that you were asked whether assessments had been collected from permit men working within your jurisdiction, within your district, and you again refused to answer?

A. No, sir. I have no recollection at all of that question.

Q. Do you recall advising the other members of your group who were at the hearing with you that they did not need to answer any questions if they didn't desire to?

A. No, sir; I did not.

Q. Do you remember that Mr. Brightbill, who was one of the group with you at that hearing, then spoke?

A. At some time during this hearing or this meeting I believe Mr. Brightbill said something, but at what point he spoke or what he said, I don't recall.

(677) Q. And do you remember that the people who were present with you at the hearing were asked whether the Executive Committee knew what the allegations were of the complaint which had been filed in Case No. 14071 and that they said that they did not recall having heard it read to them?

A. No, sir. I don't recall that at all.

Q. Do you recall that Mr. Leone, one of the group who accompanied you ——

A. I am having difficulty hearing you, Mr. Wolfe.

Q. Oh, I am sorry. Do you recall that Mr. Leone, one of the men who accompanied you to the hearing, said that the lawsuit was a mistake —— .

A. No.

Q. —the institution of the lawsuit was a mistake?

A. No, sir.

Q. Do you remember that Mr. Carter asked whether any of the persons present with you had any other statements or testimony to offer?

A. No, sir. I do not.

Q. And that no answer was given by any one of the people who accompanied you to that question?

A. No, sir. I don't recall him asking anything similar to that.

Q. Now, following that hearing charges were filed by Mr. (678) Carter against you, were they not?

A. Yes, sir.

Q. And I believe a copy of those charges have been marked for identification as Plaintiffs' Exhibit No. 53, which I show you. Now, what were the three charges, Mr. Underwood, that were made against you by Mr. Carter?

A. There are three numbered charges.

No. 1 is the deliberate defying of the constitutional authority of the general president.

No. 2, circumventing the constitution by filing a lawsuit when no complaint or charge had been filed within the International Union.

No. 3, using the lawsuit as a means to charge the general president and his fellow officers with the most reprehensible, derogatory and illegal conduct, and then when full publicity had been attained in the lawsuit, to dismiss it with prejudice, showing the utter baselessness of the allegations.

Q. Now, the first of those three charges was that you

deliberately defied the constitutional authority of the general president?

A. Yes, sir.

Q. That is a fact, is it not?

A. No, sir.

(679) Q. Did you not recommend to the Executive Board the adoption of the resolution at the meeting on August 12 that the local resist the order of the general president to terminate the strike and authorizing your counsel to take any measures necessary to prevent the general president carrying out that order?

A. The Executive Board, sir, adopted that resolution. I can't say it was due to my recommendation that they adopted it.

Q. Who proposed the resolution?

A. I don't recall now whether any specific one on the Board proposed the resolution as it is written. However, the resolution expressed the sense of the meeting. Many suggestions were made as to how the resolution should be worded.

Q. Who drafted the resolution?

A. It was drafted from the minutes of the meeting and I dictated along with, I believe, Mr. Lavery.

Q. Do you mean the minutes of the meeting, the original minutes of the meeting contained the resolution which was adopted, the language of the resolution which was adopted?

A. Oh, not the exact language of the resolution, but the resolution expressed what the Executive Board had approved.

(680) Q. Now, you filed an answer to those charges, I believe, Mr. Underwood, a copy of which has been marked P-57. Exhibit P-57 is the answer you filed to those charges; is that right?

A. Yes, sir.

Q. And following the filing of that answer was the hearing held by the General Executive Board?

A. Yes, sir.

Q. When was that?

A. The hearing was held on September 19, 1952, at New York.

Q. You were in attendance at that hearing?

A. Yes, sir.

Q. At that hearing did the Chairman of the Executive Board read the charges which had been filed against you?

A. I don't believe Mr. Delaney, the Chairman, read them. I believe they were read by Mr. Thomas.

Q. Did Mr. Delaney or someone else also read the notice that had been served upon you at the time for the hearing?

A. I don't recall that being read, no, sir.

Q. You had received the notice, however?

A. Oh, yes, I received the notice.

(681) (Discussion among counsel.)

MR. FREEDMAN: Mr. Wolfe had asked me for these three exhibits, and I looked them up and I have them ready for him.

BY MR. WOLFE:

Q. After the charges were filed and you received a copy of the charges, were you notified specifically that a hearing on those charges would be held by the Executive Board in New York on September 17?

A. Yes, sir.

Q. Now, did the Chairman of the Executive Board then ask you what your defense was to the charges?

A. No, sir.

Q. Did you say anything at all at that meeting?

A. Yes, sir.

Q. Under what circumstances and what time did you speak and in response to what request?

A. Well, after Mr. Thomas addressed the Board and

made his recommendations to the Board, then I followed him and spoke.

Q. Mr. Underwood, following that hearing or prior to the conclusion of that hearing were you asked whether there was any other evidence to be presented either by you or anyone who was with you at that hearing?

(682) A. Yes, sir. I was asked if I had anything else to present or any further papers to present, I believe was the way it was put.

Q. Well, did you present all of the evidence that you had available?

A. All that I had, yes, sir.

Q. And you and the people who accompanied you said everything that either you or they desired to say, is that correct, at that hearing?

A. I presume so.

Q. Following the hearing did you receive a copy of the decision of the General Executive Board?

A. Yes, sir, I did.

Q. I show you a letter dated September 26, 1952, addressed to you, and ask that the letter be marked for identification as Defendant's Exhibit No. 14, and ask you whether you received that letter.

(Letter dated September 26, 1952, from Charles B. Gramling to Roy J. Underwood. was marked Exhibit D-14 for identification.)

A. Yes, sir.

Q. Will you read the letter, please.

A. It is on the stationery of the International Union (683) of Operating Engineers, Washington 1, D. C., the office of the General Secretary-Treasurer, registered mail, return receipt requested, addressed to Mr. Roy J. Underwood, 2801 Garrett Road, Drexel Hill, Pennsylvania.

"Dear Sir and Brother:

"I sent you under date of September 24 copy of the deci-

sion of the General Executive Board in the matter of the charges considered against you.

"The purpose of this letter is to advise you that should you desire a rehearing of this matter, your request accompanied by the reasons therefor should be filed within ten days from the date of this letter in order that the matter may properly come before the General Executive Board in the regular order of business before the Board.

"Fraternally yours,

"Charles B. Gramling

"General Secretary-Treasurer."

Q. So that you received a copy of the decision of the General Executive Board on September 24, is that correct, or the letter dated September 24?

A. I don't believe I received it then. It says it was sent under date of September 24. I probably received it (684) the following day.

Q. Did you take any further action such as is suggested in that letter of September 24 that you have just read?

A. As to the rehearing?

Q. Yes.

A. No, sir.

Q. Have you taken any action or attempted to assert any remedy whatsoever under the International Constitution since the decision of the General Executive Board of September 24, 1952?

A. No, sir.

Q. You were present in Chicago, were you not, last April, April, 1956, at the Quadrennial Convention of the International Union of Operating Engineers?

A. I was present the second day, yes, sir, of the convention.

Q. During any of the time that that convention was in session did you make any effort to process any appeal or review from this order of the General Executive Board of September 24, 1952?

A. No, sir.

Q. I show you a copy of a letter dated December 17, 1952, addressed by Mr. Gramling to the officers and members of Local Union No. 542, which I ask be marked as (685) Defendant's Exhibit No. 15, and ask you whether you are familiar with this letter.

(Letter dated December 17, 1952, from Charles B. Gramling to the officers and members of Local Union 542, was marked Exhibit D-15 for identification.)

A. It seems to me I have seen a copy of this letter.

Q. Will you read that letter, please.

A. It is dated December 17, 1952, registered return receipt requested, addressed to the officers and members of Local Union 542, 121 North Broad Street, Philadelphia, Pennsylvania, attention Mr. Otto Weidman, Recording Corresponding Secretary.

"Dear Sirs and Brothers:

"The appeal, filed on or about September 13, 1952, on behalf of the officers and members of Local Union #542, asking for the restoration of local autonomy in Local Union #542 and the overruling of the Order of General President Maloney invoking supervision has been docketed for consideration by the General Executive Board and will be taken up in the regular order of business before that Board. Due notice of hearings thereon will be given to you.

"This letter is directed to Local Union (686) #542 and its officers and members and all persons interested in supporting the appeal of September 13, 1952 on file with this office.

"With kindest regards, I am,

"Fraternally yours,

"Charles B. Gramling,

"General Secretary-Treasurer."

Q. Subsequently you learned of the hearing which was scheduled to be held by the General Executive Board of the International Union on February 10 in Miami, did you not?

A. I learned that the Board was going to meet. However, it didn't specify that this case was scheduled to be heard. That's my recollection of it now.

Q. You mean that you did not know that this case would be heard on that day?

A. No, there was no assurance that it was to be heard, in the letter as I remember it.

Q. I show you a letter dated January 23, 1953, or a copy of a letter dated January 23, 1953, addressed by Mr. Freedman to the International Union of Operating Engineers, attention of Mr. Gramling, and ask you whether you are familiar with that letter.

(687) MR. FREEDMAN: Did you mark it, Mr. Wolfe?

MR. WOLFE: I ask that that be marked as Defendant's Exhibit No. 16.

(Letter from Abraham E. Freedman to the International Union of Operating Engineers, dated January 23, 1953, was marked Exhibit D-16 for identification.)

THE WITNESS: Could I hear the question again in connection with this, please?

BY MR. WOLFE:

Q. I asked you whether you are familiar with that letter. Did you discuss it with Mr. Freedman before it was written?

A. Well, the question was to identify it, sir.

Yes, several members discussed it with Mr. Freedman.

Q. I didn't ask you that, Mr. Underwood. I asked you whether you are familiar with the letter and whether you discussed it with Mr. Freedman before it was written.

A. I have seen the letter, and I did discuss it with Mr. Freedman along with others, yes, sir.

Q. Will you read it, please.

A. It is on the stationery of Freedman, Landy & Lorry, 1415 Walnut Street, Philadelphia, dated January 23, 1953, addressed to the International Union of Operating Engineers, (688) 1003 K Street, N. W., Washington, D. C., attention Charles B. Gramling, General Secretary and Treasurer.

"Dear Sir:

"We have been retained by a committee of the membership of Local 542 and Branches 542-A, 542-B and 542-C as representatives of the overwhelming majority of the membership of the Local and its Branches.

"The membership of the Local has instructed us to take all steps in their behalf in connection with their pending appeal to terminate the order of supervision invoked by General President Maloney on August 19, 1952.

"The members have turned over to us your letter of December 30, 1952, postmarked January 2, 1953, in which you state:

" 'All interested parties in the matter of supervision over Local Union No. 542 and its branches will take notice of the pending appeal on the subject before the General Executive Board, which was filed under date of September 13, 1952.

" 'The next meeting of the General Executive (689) Board will be held at the Monte Carlo Hotel, Miami Beach, Florida, on February 10, 1953.' "

"It is not clear to us from that letter whether you mean to hold a hearing on the date mentioned and at the place set forth. If that letter is intended to be a notice of a hearing on the membership's appeal from the order of supervision, we request that you so advise us. If it is not so intended, please be good enough to advise us exactly what you do intend by that letter.

"If a hearing is to be held in Miami Beach on February 10, 1953, on the appeal from the order of supervision, we respectfully request that you give consideration to the fact that it will impose extraordinary and unreasonable hard-

ship and expense upon the members and witnesses to travel all the way to Miami from the various areas within the eastern half of Pennsylvania and the State of Delaware. You are, therefore, requested to hold the hearing within the area of the eastern half of Pennsylvania or the State of Delaware. If the hearing is not conducted within this area, that fact will make it virtually impossible for (690) practically all but a very few to attend, and even as to that few, it will impose a tremendous hardship and take them away from their employment with resultant loss of earnings and jobs.

"If your letter of December 30 is to be construed as notice of a hearing on the appeal from supervision, then we ask that you advise us:

"1. Please state the procedure which is followed in these appeals so that we can conform to your rules and intelligently prepare for the hearing.

"2. The membership desires us to represent them at any such hearing. In view of the fact that Mr. Underwood was denied counsel at the hearing on the charges against him, please advise whether you will oppose the right of the membership to be represented by counsel of their own choosing at this hearing, with the right to fully examine and cross-examine all witnesses and to present all pertinent evidence.

"3. The membership also intends to obtain the service of an official court reporter so that the testimony rendered at the hearing may be ac- (691) curately and officially transcribed and preserved. Please advise whether you have any objection to this procedure.

"4. On behalf of the membership, you are further requested to produce at the hearing on the appeal from the order of supervision the following officials and representatives of the Union: General President William E. Maloney; General Vice President John J. McDonald; Supervisor Hunter F. Wharton, personal deputy of William E. Maloney; Harry W. Lavery, Assistant Supervisor and deputy of William E. Maloney; William E. Carter, Business Man-

ager of Local 825, Newark, New Jersey, and deputy of William E. Maloney.

"In view of the short period of time remaining before the hearing, we request that you give us your immediate reply in order to afford us ample opportunity to properly prepare for the hearing.

"Very truly yours,

"Freedman, Landy and Lorry."

(692) Q. Now, I show you also a copy of a letter dated January 30, 1953, written by Mr. William H. Thomas as general counsel of the International Union of Operating Engineers, to Freedman, Landy & Lorry, which I will ask be marked for identification as Defendants' Exhibit No. 17.

(Letter from William H. Thomas, General Counsel of the International Union of Operating Engineers, to Freedman, Landy & Lorry, was marked Exhibit D-17 for identification.)

* * * * * * * * *

(693) Q. Would you read the letter, please.

A. It is on the stationery of the International Union of Operating Engineers, 10th and K Streets, Northwest, Washington, D. C. William H. Thomas, General Counsel. It is dated January 30, 1953, addressed to Freedman, Landy & Lorry, 1415 Walnut Street, Philadelphia 2, Pennsylvania.

(694) "Attention: Abraham E. Freedman.

"Dear Sir:

"Your letter of January 23rd has come to my attention and I deem it fitting, as between Lawyers, to reply thereto as General Counsel of the organization.

"It appears that some members have chosen our General Executive Board as the forum wherein they have filed and there is now pending an appeal against International Supervision over Local Union 542. In this endeavour the appellants seek to channel their efforts within the frame-

work of this organization and ostensibly intend to follow the appellate procedure and rules of the International Union applicable thereto. Of necessity they will be guided and controlled by the rules of that forum.

"Nowhere in the history of this organization does it appear that outsiders have been recognized or have been permitted to appear on appeal matters before the General Executive Board. Our rules confine such appearances to members only and the constitution specifically provides that complainants and defendants may present their own cases or by counsel selected from among the membership of the International (695) Union of Operating Engineers'. The constitutional power of the General Executive Board to determine the method of procedure and the times and places for the holding of hearings, trials and appeals' has been universally upheld by the Courts of the land and this includes the uniform refusal on the part of the organization to permitting outside Counsel to intervene in our internal affairs. Such ruling must therefore apply to your letter of January 23rd.

"It is therefore pertinent to suggest that if the interested members who are involved will promptly advise direct of any desire on their part that a meeting or meetings of the General Executive Board be held specifically and at a point less removed from Philadelphia than Miami, Florida, the same should be submitted by them to be considered by the Board at its forthcoming meeting on February 10th at Miami, Florida, the place of its usual and customary winter meeting.

"Very truly yours,

"W. H. Thomas."

There is a—"William H. Thomas," I believe, "General Counsel."

Q. Did you in response to the suggestion contained in the (696) last paragraph of Mr. Thomas' letter make any requests to the General Executive Board that the hearing on this appeal be held elsewhere than at Miami and at some other date than the date that had been fixed?

A. I did not. No, sir.

Q. Did you appear at the hearing before the General Executive Board in Miami?

A. No, sir. I did not. I wasn't even a member of the union at that time, Mr. Wolfe.

Q. I show you a copy of a letter dated February 25, 1953, which I will ask to be marked as Defendants' Exhibit No. 18 ——

(Letter from Charles B. Gramling, General Secretary-Treasurer, to Mr. Otto Weidman, Recording-Corresponding Secretary, was marked Exhibit D-18 for identification.)

BY MR. WOLFE:

Q. —and ask you whether you are familiar with that letter.

THE COURT: What is the date of the letter?

THE WITNESS: February 20, 1953.

BY THE COURT:

Q. Letter from whom to whom?

A. It is from Charles B. Gramling, General Secretary (697) Treasurer ——

Q. How do you spell "Gramling"?

A. G-r-a-m-l-i-n-g.

Q. To whom?

A. It is addressed to Mr. Otto Weidman, Recording Corresponding Secretary, Local 542, 121 North Broad Street, Philadelphia, Pennsylvania.

I don't remember this letter, sir.

BY MR. WOLFE:

Q. Are you familiar with the fact, Mr. Underwood, that following the hearing which the General Executive Board held in Miami in February and the non-appearance of any one with respect to the appeal from supervision, that the general president, Mr. Maloney, appointed an interim hearing board to come to Philadelphia and to all the other cities within the territorial jurisdiction of Local Union 542 in order to take testimony upon the issues raised by the appeal from supervision?

A. I knew that an interim hearing board was appointed by Mr. Maloney, yes, sir, to hold hearings within the ——

Q. Now ——

MR. FREEDMAN: Let him finish.

A. —territorial jurisdiction, to hold hearings within the territorial jurisdiction of the local union.

(698) BY MR. WOLFE:

Q. Did you appear at any of those hearings, Mr. Underwood?

A. No, sir.

Q. As a matter of fact, you attempted to persuade the members of Local 542 not to attend the hearings, didn't you?

A. It was certainly discussed.

Q. Had you ——

A. I don't say that I attempted to persuade them, but the advisability or inadvisability of attending interim hearing board hearings under the chairmanship of the man appointed and of the other members in view of the fact that they had been appointed as members was certainly discussed among the members at great length.

Q. Mr. Underwood, didn't you write a letter which you circulated among the membership of Local 542 asking them

and advising them not to appear at any of these hearings of the interim hearing board to give testimony?

A. I believe there was a letter; yes. I am not sure that it was sent out by the committee, whether it was sent out by me, but there was a letter, I believe, went out explaining the interim hearing board and discussing generally the effect of it.

Q. And who else was on the committee besides you?

(699) A. The committee consisted of the committee and all members who attended our meetings. There was no formal committee setup.

* * * * * * * * *

(699) RE-DIRECT EXAMINATION.

BY MR. FREEDMAN:

Testimony Omitted.

(743) RE-CROSS EXAMINATION.

BY MR. WOLFE:

Q. Mr. Underwood, how many members of Local 542 were there when you became a member in 1937?

A. I don't know. I didn't have access to that information.

Q. Well, you attended the meetings from the beginning of your connection with the union, I think you testified.

A. Practically all the meetings, yes, sir.

Q. Do you know it to be a fact that there were fewer than a hundred members of Local 542 when you became a member?

A. Oh, no. I have seen more than that at some meetings. Over a hundred members, I am sure.

Q. In 1937?

A. Yes. The number varied considerably at different meetings. I have seen a hundred men out of work standing in front of the hall in 1937, sir.

Q. Members of Local 542?

A. Yes, sir.

Q. You testified yesterday that these 3 per cent assessments that were paid by you and the other members were discontinued in September, 1940, did you say?

A. I would presume so. A least my book shows no further assessments of 3 per cent.

Q. Well, you have no doubt, do you, that the assessment was (744) discontinued in September of 1940?

A. I firmly believe it was, yes, sir.

Q. Do you know when Mr. Maloney became president of the International Union?

A. Yes, sir, 1940.

Q. You said that when you became president in 1948 you saw no record of the amounts collected on this assessment. Did you examine the books and records of the auditors that had been prepared during the period prior to 1940, the auditors of the finances of Local 542?

A. Some time later I recall looking at some of the records. At the time we went into office I did make inquiries about these assessments and the permit fees.

* * * * * * * * *

(745) Q. I want to know specifically, Mr. Underwood, whether you saw the records, including the accounts and reports of certified public accountants, of the finances of this union from 1935 to 1940, when you became president.

A. I saw some records. Very few records, however.

Q. Did you examine them?

A. I gave them a cursory examination, sir.

(746) Q. These two letters which you identified yesterday and which were marked Exhibits P-64 and P-65, each dated September 8, 1952, will you tell me who dictated those letters?

A. I believe Mr. Freedman ultimately dictated the letters after discussion between us.

Q. Dictated both letters; and they were both dictated in his office, were they?

A. Sir?

Q. They were both dictated in his office, were they?

A. Yes, sir.

Q. And typed in his office?

A. I can't be sure both of them were typed. The one of September 8 to Mr. Maloney looks like it might have been done in our office. It was done on an electric typewriter, and that is why I assume it could have been done there.

Q. Were they both typed at the same time or in succession?

A. Well, it would seem so. They are both dated September 8.

Q. Now, who signed the letter which is marked Exhibit P-65?

A. That was signed by a group of members. I don't recall the names of the members now. One I think was Michael Concordia, possibly James Russell, others. I just don't recall the names now.

(747) Q. Well, who else was present at the time that the letter was signed?

A. I don't remember that. I don't even remember whether or not I was there at the time it was signed. I remember seeing the letter.

Q. Did you also sign it?

A. No, sir.

* * * * * * * * *

(2623) [RECALLED—DIRECT EXAMINATION]

BY MR. FREEDMAN:

Testimony Omitted.

(2765) [RECALLED] CROSS-EXAMINATION.

BY MR. WOLFE:

Q. Mr. Underwood, will you look at Exhibit P-178, which you identified this morning. Do you have it before you?

A. Yes, sir, I have it here, yes, sir.

Q. Will you tell me in what respect the proposal which is outlined in that exhibit differs from the original demands that were supplied or submitted by the union to the contractors, negotiators.

A. It provides for arbitration of at least five of the demands initially submitted by the union to the employers.

Q. That is, the second page of that exhibit, which is headed "Arbitration", indicates that the items contained in that page, the five items in that page, the union was (2765a) willing to arbitrate; is that correct?

A. Yes, sir.

Q. However, all the other items in that exhibit, which are contained on page 1, are the original demands in their original form, are they not, as submitted by you on behalf of Local Union 542 to the contractors?

A. They are among the original demands, yes, sir.

(2766) Q. Now, in paragraph two on page 1 of that exhibit, you have listed from (a), under the captions (a) to (i), inclusive, a number of specific demands; is that correct?

A. Yes, demands contained in the rider to the agreement.

Q. The first one, which is 2(a), is the demand for a pension plan which would provide a monthly benefit of $100 for each employee engaged in the industry for 20 years or more; is that correct?

A. Yes, sir.

Q. Was there any such provision in the contract which you had just negotiated with the independent contractors?

A. No. There was a provision in the independent contractors ——

Q. Just answer the question. Was there any such pro-

vision in the contract you negotiated with the independent contractors?

MR. FREEDMAN: If the Court please, I ask that the witness be permitted to answer.

THE COURT: I think that Mr. Wolfe in this case happens to be extremely right. That is a yes or no answer.

THE WITNESS: There was no specific provision, no, sir, calling for a pension program, the independent contractors ——

* * * * * * * * *

(2767) Q. The second demand, which is in paragraph 2(b), is with respect to the safety code. Was there any such provision in the contract you negotiated with the independent contractors?

A. No, sir.

Q. And is it not a fact that in every case of every demand included in paragraphs Nos. (a) to (i), inclusive, those are demands which were not contained in the contract you had just shortly prior thereto negotiated with the independent contractors?

A. I understood you to say, from (a) to (i)?

(2768) Q. That is right.

A. That is true, yes, sir.

Q. That is, there is not a single one of those demands which on this exhibit are contained in paragraphs 2(a) to (i), inclusive, which were included in the contract that you negotiated with the independent contractors just a short time before these demands were presented to the association contractors?

A. That is right, yes, sir.

Q. I call your attention, for instance, to paragraph 2(m). That provides, does it not, that "The associations who are

bargaining for the individual contractors"—and I am quoting—"shall be responsible for the acts of individual members and all members of the Associations agree to be responsible for any and all damages which they themselves cause or for which the Associations may become responsible."

Did I read that provision as it is contained in the exhibit?

A. Yes, sir.

Q. Had you ever heard of any such provision contained in any collective bargaining contract negotiated by any union with any contractors in which every member of the association of contractors agreed to indemnify and become liable for the default of any other contractor who was a signatory to the (2769) contract?

A. It seems to me that I have, but I can't identify it now, where there would be collective liability on the part of the members of the association. I just can't tell you where I saw it.

Q. Who proposed the inclusion of that provision in your demands?

A. I proposed it, and Mr. Freedman—I discussed it with Mr. Freedman and with our executive board, and they approved it.

Q. Now, will you look, Mr. Underwood, at Exhibit P-180 and subsequent exhibits which purport to be, and apparently are, longhand notes of meetings? Do you have those before you?

A. No, sir, not as yet.

* * * * * * * * *

(2777) Q. Mr. Underwood, P-180, I believe you testified consists of the longhand notes of Mr. Rudden; is that correct?

A. Yes, sir.

Q. When did you first receive those notes, that exhibit?

A. I don't recall exactly when I received them. It probably was the following day.

Q. From whom did you receive them?

A. I don't recall that either. They probably were left in the office. Miss Gallagher brought them to my attention, or after she had taken them off and typed them brought them to my attention. I don't recall now.

Q. I believe you testified that you drafted the minutes of that meeting which are contained in Exhibit P-180-A.

A. I think I did, yes, sir.

Q. Where did you draft them?

A. Well, it would have been done in the office of the local union.

Q. Where has Exhibit P-180 been since you first received it?

(2778) A. Up until the time supervision was imposed on the local union it was probably in the desk, in my desk, along with other longhand minutes that had been prepared by Lavery.

Q. You would say, then, up until about August 18 or 19 of 1952?

A. I should think so, yes, sir.

Q. What happened to them then?

A. I took them from my desk and took them home with me.

Q. And they have been in your possession at your home ever since, since August, 1952?

A. Either in my possession or in Mr. Freedman's possession.

Q. Is the same thing true of all the other longhand minutes which you have produced during the course of this trial? I mean is the same thing true as to possession of them during the period from the date that they purport to have been prepared and their production here at trial?

A. I believe, yes, that they were all in the desk until supervision was imposed, when I took them home with me, yes, sir.

Q. Now, these were original records belonging to Local 542, were they not?

A. They were original longhand minutes, yes, sir.

Q. Now, what other records of Local 542 did you take with you when you left the office in August of 1952?

(2779) A. I took some copies of minutes. Not too many. There were a few, however. I had my secretary take from the minute book and type up copies of some minutes.

Q. Where are the longhand minutes of the other meetings of the Executive Board and the membership of Local 542 and its branches?

A. I don't think longhand minutes ever came to my attention prior to the time Mr. Lavery took minutes. Mr. Weidman was recording secretary, and he used to take his own longhand minutes home with him and type them and send in a typed copy to the union.

Q. Now will you answer my question, please.

A. I don't know of any longhand minutes prior to the time Mr. Lavery started taking minutes.

Q. You mean the first longhand minutes you ever saw of any meeting were the minutes of the meeting of April 29, 1952, prepared by Mr. Rudden, which have been marked Exhibit P-180?

A. If that is the first date of the minutes produced here, yes, that is true, because all of the longhand minutes in my possession have been produced.

* * * * * * * * *

(2780) Q. Do you mean to say that you did not ask Mr. Lavery to sign the minutes which you drafted of the meeting of April 29, 1952?

A. I don't recall that I ever asked Mr. Lavery to sign minutes. Those minutes were prepared in the office of the union. Mr. Lavery would come in a day before the regular meetings of the union, and Miss Gallagher, as a rule, would hand the minutes to Mr. Lavery and ask him to go over them and sign them in preparation for presentation to the membership at the meeting. I don't recall ever asking him specifically to sign minutes.

Q. Now, there is nothing in the notes of that meeting with (2781) respect to the alleged presence at the meeting of Mr. McDonald, is there?

A. It isn't noted in the longhand minutes. However, it is in the official minutes of the union, yes, sir.

Q. That is, although there is no reference to his alleged presence in the notes, you inserted it in the minutes which you drafted?

A. Well, I knew he was there if I inserted it, sir.

Q. Is that correct?

A. Evidently so, because it is in the official minutes, and it was put in there because he was seen there.

Q. Will you look at Exhibit P-181, please.

(Exhibit P-181 handed to the witness.)

Q. When did you receive those minutes, Mr. Underwood, or those notes which are included in Exhibit P-181?

A. Well, again I can't tell you specifically when I received them. I received them either that night or the following morning, when Mr. Lavery came into the office.

Q. And you drafted the minutes of the meeting which are contained in Exhibit P-181-A?

A. Between Mr. Lavery and myself, yes, sir. That was the practice.

Q. I didn't ask you what the practice was, Mr. Underwood. I asked you whether you drafted the minutes which are con- (2782) tained in Exhibit P-181-A.

A. I can only make assumptions, because I don't recall specifically what occurred at this time, June, 1952. I can only tell you what the practice was.

Q. Were those minutes drafted in Mr. Freedman's office?

A. No, sir. No minutes were ever drafted in Mr. Freedman's office.

Q. Will you look at the third page of Exhibit P-181, and I call your attention to the phrase or the sentence which occurs in two places near the bottom of that page, "Fill in

this section," in one instance, and in the other, "Fill in as you see fit." What do they mean?

A. It means that where there was a rather vigorous discussion or a rapid discussion of some subject at the meetings, Mr. Lavery was unable to put it down on paper so that it could be intelligible, and he would simply put in there, "Fill in this section," or "Fill in as you see fit," or something to that effect.

Q. In whose handwriting are the marginal notes on Exhibit P-181, the words written in the margin?

A. They appear to be in the handwriting of Miss Gallagher.

Q. When were they inserted?

A. Well, some time after the minutes were drafted. I am not at all certain they are in Miss Gallagher's writing, (2783) but they appear to be.

Q. They are not in Mr. Lavery's writing, are they?

A. No, sir, they are not, nor mine.

Q. And you don't recall how long after you received the notes the minutes were prepared by you of that meeting? Is that what you said?

A. Not of this particular meeting. I can only say probably the following day.

Q. All right, now, will you look at Exhibit P-182, please.

(Exhibit P-182 handed to the witness.).

Q. Now, those are the handwritten notes again of Mr. Rudden, are they not?

A. Yes, sir.

Q. And you drafted the minutes of the meeting referred to in those notes as contained in Exhibit P-182-A, did you?

A. I believe I dictated them, yes, sir.

Q. There were eight members of Local 542 tried at that meeting, were there not, upon various charges?

A. Yes, sir, eight.

Q. And those eight members of Local 542 were fined $200

and suspended three months because they wanted to continue to work for their employer after the strike; isn't that correct?

A. The board recommended.

(2783a) Q. Will you answer the question.

A. No, sir. The board recommended that the fine be imposed upon them and a suspension from the union for a period of three months for crossing picket lines in violation of a previous resolution adopted by the membership.

(2784) Q. What further action was taken after the action by the Executive Board with respect to these charges?

A. I would have to go through the subsequent minutes to determine that, sir. I don't remember now. It is my recollection that suspensions were lifted; they were reconsidered and certain fines were omitted with respect to some of them. I don't recall now exactly what the disposition was.

Q. How many other members of Local 542 were fined and suspended because they were not in sympathy with the strike?

A. I don't know of any other. As a matter of fact, sir, it was agreed that ——

* * * * * * * * *

(2785) Q. Will you answer that question, please?

A. I said I know of none other at this time, but I would like to explain why.

Q. I am not interested in why.

A. Very well, sir.

Q. You may explain that later.

* * * * * * * * *

Q. Is it not a fact, Mr. Underwood, that 21 additional members were tried before the Executive Board at the meeting on June 30, 1952, on the same type of charges?

A. A number of cases came up, but I don't know what
(2786) the disposition of those cases were. I don't know how many. You give a figure of 21. I don't know.

Q. Who filed the charges against these members, Mr. Underwood?

A. Those charges would be in the records of the union. I can't tell you now from memory as to who filed charges.

Q. Were written charges filed against each one of these members?

A. I don't know. I don't think so, in all cases. I think it was simply brought to the attention of the Executive Board, and the Board called them in to determine whether or not they had violated the resolution of the union.

Q. You know, do you not, Mr. Underwood, that there were no written charges filed with respect to any one of them?

A. Only the charges contained in the minutes of the meeting. I don't know that none were filed. But I know the charges were contained in the minutes.

Q. Was there any deposit made by anyone with the union, by anyone who filed any charges against any of these members?

A. I don't recall that any deposit was made.

Q. Mr. Underwood, I hand you a copy of the Union
(2787) Constitution which has been marked as Exhibit D-3 in this case, and call your attention to Article XXIII, subdivision 7, on page 100, or page 99. That deals with the subject of trials by local unions, does it not?

A. Yes.

Q. Would you read Section (m) of subdivision 7 of Article XXIII?

A. (m)?

Q. (m), yes; subsection (m).

A. Yes, sir. It is Article XXIII, subdivision 7, Section (m):

"All charges must be preferred in writing, signed by the complainant and filed with the Recording-Corresponding Secretary and read by the Recording-Corresponding Secre-

tary at the next succeeding meeting following the filing of same. Immediately upon filing of such charges the Recording-Corresponding Secretary shall notify the defendant in writing, enclosing a copy of said charges, and of the date set for the filing of the answer or defense or the entering of a plea by the defendant, which date shall not be less than two nor more than four weeks thereafter."

Q. Now, none of the provisions in that section were (2788) complied with in the trial of these members of Local 542 to which I have referred, were they?

A. I believe not, under instructions from the International Vice President, sir.

Q. Now, would you read Section (n) of Article XXIII.

A. (Reading): "After the pleadings are filed or the plea entered or the time elapsed within which the same must be filed or entered, the President shall cause the parties to be notified at the trial date, which must be the next regular meeting thereafter."

Q. What is meant by "regular meeting"?

A. The regularly scheduled membership meeting.

Q. Membership meeting; not an Executive Board meeting?

A. No. The first Tuesday of each month.

Q. All right. Will you proceed, please?

A. (Reading): "Unless a request for postponement of the trial shall have been made to and granted by the President, the trial shall proceed upon the date set. Complainants and defendants may present their own cases or by counsel selected from among the membership of the International Union of Operating Engineers. After all the evidence is in and a full and impartial hearing has been had upon the issues, the President shall distinctly state (2789) the charge or charges and present the matter to the members present at said meeting for a vote."

Q. Now, the provisions of that section were not complied with, either, in connection with these trials, were they?

A. In one respect, yes, it was.

Q. In what respect?

A. Where it says, "unless a request for postponement of the trial shall have been made to and granted by the President, the trial shall proceed upon the date set."

There was a request that all of these cases be held in abeyance until after the strike was over.

Q. There was no trial at any time at a meeting of the membership, was there? These trials were all held in Executive Board meetings; wasn't that correct?

A. The hearings were held, yes, before the Executive Board, and the recommendations made to the membership.

Q. There was no trial at any time at a membership meeting; isn't that correct?

A. No trial except in accordance with the procedure we were instructed to follow by Mr. McDonald. That is the only thing that ——

Q. You say you were instructed to file it by Mr. McDonald?

(2790) A. Yes, sir.

Q. When did that occur?

A. That occurred shortly after the strike was called.

Q. Mr. McDonald did not attend the Executive Board meetings at which these trials were conducted, did he?

A. I believe he was present at nearly all of them.

Q. Now, will you read Section (o) of Article XXIII?

A. Section (o) reads as follows:

"The said members shall vote by ballot, either guilty or not guilty, on the merits of the case. Three tellers shall be appointed, one by the defendant, one by the complainant and one by the Vice President (if the President is either complainant or defendant then the third teller shall be elected by the meeting), which tellers shall collect the ballots and announce the verdict. A three-fourths vote of the membership recorded as present shall be required for conviction in cases involving expulsion and a majority vote in cases involving other penalties. If a verdict of guilty is returned the President shall then prescribe the penalty permitted by the vote to be imposed."

Q. Now, the provisions of that section were not complied (2791) with, either, were they?

A. No, sir.

Q. And will you read the first sentence of Section (q)?

A. The first sentence?

Q. Yes, please.

A. Section (q):

"Any member other than the President of the Local Union preferring charges against another member as provided herein, must deposit ten ($10.00) Dollars with the filing of said charges and in the event such charges are proved said deposit shall be returned to the member filing the same, and, if not proved, shall be forfeited to the Local Union."

Q. And that provision was not complied with, either, was it, in the course of these trials?

A. No, sir. I don't think any fines were imposed, sir.

Q. Now, will you look at Exhibit P-183, please? P-183 purports to be notes of a meeting prepared by Mr. Rudden; is that correct?

A. Yes, sir.

Q. And when did you receive P-183?

A. Again I have to say it is only likely that I received it either that same night or the following day.

(2792) Q. What was the date of the meeting of which P-183 purports to be Mr. Rudden's notes?

A. I see at the top, June 25, 1952.

Q. Now, what is the date of the meeting for which you prepared the minutes as reflected in P-183-A?

A. The minutes here state that the meeting was held on June 23rd. It is undoubtedly my error, if there is an error, because I wrote down June 25th on top, probably that same night or the following day, and then in transcribing it, it reads "June 23rd," sir.

Q. That is, the words at the top of Exhibit P-183 are in your handwriting?

A. They appear to be, yes. They are in my handwriting.

Q. What else on Exhibit P-183 is in your handwriting?

A. Nothing else in my handwriting except the date and the location of the meeting written at the top.

Q. What about the marginal notes?

A. Sir?

Q. What about the marginal notes, the letters in the margin of that exhibit?

A. Oh, no. They are in the handwriting of Mr. Rudden.

Q. Now, at that meeting, Mr. Anthony Volpe, a member of Local 542, stated that the local had breached its agreements with the contractors year after year. Is that (2793) correct?

A. Which minutes are you referring to now?

Q. P-183-A.

A. Yes, sir, that is correct. He made such a statement, evidently.

Q. Incidentally, you did draft the minutes of that meeting which are contained in P-183-A, did you not?

A. I believe I dictated them, yes, sir.

Q. Do you recall when you dictated them, how long after you got Mr. Rudden's notes you dictated the minutes?

A. Probably within a day or two after I got them.

Q. Now, in the minutes you dictated, there is contained this statement, too, is there not, that it was moved and seconded that Brother Volpe be asked to surrender his membership book to the union on the basis that his conduct was disgraceful; is that correct?

A. Yes, sir. That was the basis for the motion on the floor at the meeting.

Q. That was the way you characterized his conduct in drafting these minutes; is that correct?

A. That is the way the members characterized it, sir, at the meeting.

Q. Where do you find that in the notes of the minutes?

A. Well, there are many, many things not contained in (2794) the original notes of the meeting.

Q. So that in drafting the minutes of these meetings, you did not consider yourself bound by the notes which

the Secretary had made of the meeting? You put in whatever you saw fit to put in; is that correct?

A. No, sir. Certainly we were bound by the longhand notes made by the Recording or Acting Recording Secretary at the meetings.

(2795) Q. Well, you considered ——

A. However, there were many things not contained in the longhand notes that the recording secretary agreed should be included in the minutes.

Q. You considered the statement of Member Volpe to the effect that the local union had breached its agreement with the contractors to be disgraceful conduct; is that right?

A. The membership, yes, that was the form of the motion made.

* * * * * * * * *

Q. Will you look at Exhibit P-184, Mr. Underwood.

(Exhibit P-184 handed to the witness.)

Q. That again purports to be the longhand notes of Mr. Lavery of an Executive Board meeting held on June 30, 1952; is that correct?

A. That is the notes of Mr. Lavery and signed by Mr. Lavery, yes, sir.

(2796) Q. Did you prepare the minutes of that meeting, P-184-A?

A. Yes.

Q. On the first page of Exhibit P-184, about two-thirds of the way down from the top of the page, Mr. Underwood, appears this note, does it not:

"M. M. Howlett. Comment: Contractor must be approved by International Union."

is that correct?

A. Yes, sir.

Q. Why is there no reference to that in the minutes that you prepared of that meeting?

A. I don't know, unless it seemed unimportant at the time. It was a reference to the contract that had already expired.

Q. At that meeting, Mr. Underwood, there were charges processed against 21 additional members of Local 542, were there not?

A. A number failed to appear, yes, and the board recommended that charges be filed against all who failed to appear.

Q. Now, in various places appears the statement, "Moved that action be taken in accordance with resolution adopted by local union membership. Passed unanimously." That refers to the resolution which had been adopted to fine any member who crossed a picket line $200 and suspend him three months; isn't that correct?

(2797) A. Yes, sir.

Q. In whose handwriting are the marginal notes on Exhibit P-184?

A. I don't know. They could have been written by Mr. Lavery or by someone in the office.

Q. Your answer is you don't know?

A. I don't know. I can't say. It is printed, and I can't identify it.

Q. Will you look at Exhibit P-185, please.

(Exhibit P-185 handed to the witness.)

Q. Where and when did you first receive Exhibit P-185, Mr. Underwood?

A. I would assume again that I received it either the same day, it was handed to me to take back to the office, or within a day or two thereafter.

Q. And was the first page attached to the notes of that meeting when you first received it?

A. It probably wasn't attached, but it was with it, no doubt.

Q. What became of it?

A. I don't know. I would like to have it too.

Q. Did you draft the minutes of that meeting as contained in Exhibit P-185-A?

A. I undoubtedly dictated it while Mr. Lavery was there.

(2798) Q. From what notes did you dictate the first page of those minutes?

A. Probably—undoubtedly—the page was present at the time. We had the page at the time these notes were dictated.

Q. Will you refer to page 3 of Exhibit 185, near the bottom of the page. The notes recite that a motion was adopted unanimously at that meeting to the effect that any member who ever crosses a picket line be fined $250 and suspended from the local; is that correct?

A. The motion by Howlett, you are referring to?

Q. That is correct, yes.

A. Yes, sir.

Q. Do you remember a member named William Savage, who lived in the Scranton area?

A. Yes, sir, I remember a member by that name.

Q. Do you remember suspending him as a member of Local 542 without even holding a meeting?

A. Oh, no; no, sir. Those charges were brought by Mr. Lavery against Mr. Savage, and we tried over a period of several months to have Mr. Savage come in to be heard. I know there was correspondence, considerable correspondence, in connection with it.

Q. Was he fined and suspended?

A. I believe the membership voted, yes, finally, to fine (2799) him. I don't recall whether there was a suspension involved or not.

Q. You say the membership voted on that?

A. Yes, sir, that was taken up at the meeting of the union.

Q. At what meeting did that take place?

A. I don't recall the date of the meeting now, but cer-

tainly charges were filed and it was taken up at the regular meeting of the union.

Q. Will you look at Exhibit P-187, Mr. Underwood. What was the meeting of which that purports to be the longhand notes?

A. It appears to be July 22 and July 23 of 1952. One follows the other, apparently.

Q. Well, when was the meeting held?

A. The first page and a half apparently refers to the meeting held on July 22 of the Special Executive Board, and the July 23 meeting is a meeting of the Negotiating Committees for the union and the employers, and it begins on page 3.

Q. Now will you look at Exhibit P-191.

(Exhibit P-191 handed to the witness.)

Q. Will you look at page 2, please, of Exhibit 191.

A. Yes, sir.

(2800) Q. That meeting was held when?

A. July 25, 1952.

Q. On Friday, July 25, 1952?

A. Yes, sir.

Q. When was it you first went out to Chicago? Was it the following day, Saturday, the 26th?

A. The evening of the 26th, yes. I left that evening.

Q. It was at this meeting on the 25th, was it not, that you and the Executive Board considered—I think as you testified earlier in this trial—what kind of a proposal you should be prepared to make to Mr. Halloran and the contractors for a settlement of the contract issues?

A. No, it wasn't discussed about a proposal to be submitted to Mr. Halloran at that time. There was a discussion as to whether or not we should have something to show to Mr. Maloney to indicate to Mr. Maloney that the local union was trying to be reasonable and was willing to retreat from some of the demands if a settlement could be reached.

Q. Well, now, as indicated by the notes of that meeting, on pages 2 and 3 of Exhibit P-191, you and the Executive Board of the local at that meeting came to the conclusion that the demand with respect to the Pension Fund should be arbitrated; is that correct?

A. Apparently so, yes, from these longhand notes.

(2801) Q. You came to the conclusion that the demand with respect to the Safety Code should be arbitrated; is that correct?

A. The notes indicate that, sir. Yes, sir.

Q. And at that meeting, as indicated on page 4 of those notes, a resolution was adopted to the effect that 12 of your 19 demands should be submitted to arbitration; is that correct? I call your attention to the middle of page 4.

A. Yes. This says 12 demands, but I was just counting the ones that were noted in the minutes.

Q. They count up to 12, do they not?

A. I don't believe so, no, sir.

Q. Well, let's see.

A. Possibly they do. I didn't count them carefully.

Q. At the bottom of page 2, at the margin, appears the figure No. 3 and the words "One missing." That must be the merger of the Welfare Fund, must it not? It was agreed, was it not, that the question as to the Welfare Fund, the Pension Fund, the Safety Code, should be arbitrated, the demands Nos. 6, 9, 10, 11, 12, 13, 14, 18, and 19 should be arbitrated; is that correct?

A. I don't know which one is missing. It says one missing here. I don't know which one that would be. I count 11 here that are set forth.

Q. Do you have any doubt that the twelfth was the Welfare (2802) Fund?

A. Oh, yes, yes. I have serious doubt of that because that was not contained among the demands in the list here. That Welfare Fund was already in the agreement, in the independent contract, and therefore was not a separate demand of the union.

Q. Well, now, will you refer to Exhibit P-178, Mr. Underwood.

BY THE COURT:

Q. Where was that paper typed, P-178?
A. In Chicago, sir.

BY MR. WOLFE:

Q. P-178, as I recall it, Mr. Underwood, as you testified, was drafted by you the night of the first day you were in Chicago, the first night in July you were in Chicago, for the purpose of submitting it the next morning; isn't that correct?
A. No, sir, that is not.

MR. WOLFE: May I have volume three of the testimony, please, page 347.

(Volume three of the testimony was handed to Mr. Wolfe.)

Q. Mr. Underwood, you testified on February 6, 1957—and I am reading from page 347 of the testimony—as follows:

(2803) "That was in the afternoon. We had been discussing this back and forth from about eleven o'clock, I believe, in the morning, up until the afternoon. So I stayed up all that night writing out in longhand as nearly as I could recollect what the Board had recommended in the way of revisions in the demands. The following morning I went to the offices of Local 150. * * *"
and so forth.

Now, is P-178 the document that you were referring to in that testimony?
A. Yes, sir. That was not the first day, sir. You asked

me if it was the first night I was there, and it was not the first night.

Q. Oh, that is what you meant by your answer, that it wasn't the first night?

A. Oh, no. I drafted it, surely, but it wasn't the first night. It was after discussions had taken place.

Q. But there is no doubt, is there, Mr. Underwood, that P-178 is the document you drafted in Chicago and which you testified, at the portion of the record which I have just read, reflected the conclusion that you and the Executive Board of the local came to as a counterproposal to make to the contractors in order to settle these contract issues?

(2804) A. As near as I could recall, yes, I drafted it, from memo , of course. I drafted it in accordance with the recommendation of the board as nearly as I could recall then.

Q. Well, then, you didn't recall, when you drafted P-178, that the demand as to the Safety Code should be submitted to arbitration, did you, and you didn't remember that the demand as to the Pension Fund should be submitted to arbitration?

A. Apparently not, no, because this was something that Mr. Maloney had suggested that I draw up, and I had that in mind, of course, the recommendation of the board.

Q. Although you and the Executive Board on Friday, the 25th, had determined to include 12 of the 19 demands for arbitration in your counterproposal, you only included five; isn't that correct?

A. Five, I believe, yes, sir. Subject to approval of the membership, sir.

Q. Will you look at Exhibit P-191-A. Those are the minutes which you drafted, are they not, of the meeting of July 25, 1952, as reflected in the notes of that meeting which are contained in Exhibit P-191?

A. Yes, I believe they were dictated with Mr. Lavery, between Mr. Lavery and I.

(2805) Q. When did you draft those minutes, Mr. Under-

wood? Before you went to Chicago or after you came back?

A. I don't remember now. I would be inclined to think it was the following day.

Q. Now, those minutes contained no reference whatsoever to the chief business transacted, apparently, at the meeting, as reflected by the notes, which was the resolution concerning the counter-proposal on the contract, do they?

A. I see no reference to the recommendation that the demands be revised in some respect. I see no reference to that.

Q. But the minutes of that meeting as drafted by you do contain a resolution, do they not, at the bottom of page 1? They recite the adoption by the Executive Board of that meeting of a resolution to the effect that, "No contract between our Local Union and the Contractor Associations shall be acceptable or honored by our Local Union unless such a contract is negotiated and signed by our Local Union Representative"; is that correct?

A. Yes, sir. That is contained in the minutes, yes, sir.

Q. Where do you find any reference to such a resolution in the notes of that meeting?

A. I don't see that spelled out in the minutes, no, sir. (2806) It is just the motion that they not accept anything, except the contract based on the proposals made by the union.

Q. What are you referring to, Mr. Underwood?

A. That is the motion by M. Howlett, on page 4, P-191.

Q. The motion you are referring to is the motion with respect to the submission of 12 of the 19 demands to arbitration, on the counter-proposal; isn't that correct?

A. Yes, "providing the rest of the demands be agreed to by employers. 2nd by J. Ungaro. Carried unanimous," yes.

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[RECALLED] RE-DIRECT EXAMINATION.

Testimony Omitted.

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(2813) [RECALLED] RE-CROSS EXAMINATION.

BY MR. WOLFE:

Q. Mr. Underwood, how many local unions approximately are there of the International Union of Operating Engineers? Are there a thousand?

A. No, I don't believe so. I believe there are about seven hundred, seven to eight hundred, including the branch locals, of course.

Q. And how many business agents would you say on an average each local union has?

A. Oh, that would be impossible to estimate. Some locals have a membership of 100; other locals have a membership of several thousand. I don't know how many they would have.

Q. They would average at least five, would they not?

A. Oh, no, I don't think that at all, no, sir.

(2814) BY THE COURT:

Q. They would have at least one, wouldn't they?

A. Yes, I would say they would have one. I have heard of instances, sir, where they haven't had one.

BY MR. WOLFE:

Q. Do you have any doubt at all, Mr. Underwood, that there are at least 2500 business managers and business agents throughout the country of the International Union of Operating Engineers in the various locals?

A. I would doubt that there would be that many, yes, sir.

BY THE COURT:

Q. What is your estimate?
A. I would say that it would be closer to probably two or three, no more than three business agents per local.
Oh, you mean the total number, sir?
Q. The total number. Two thousand?
A. Probably that or less, yes, sir.

MR. WOLFE: I have no further questions.

BY THE COURT:

Q. Yesterday Mr. Wolfe referred to Exhibit No. 178 and referred specifically to paragraphs 2(a) to (i) inclusive. I believe you said it was true that none of those demands had been made of or had been included in the independent contract. Now I would like you to read to me from P-178 (2815) paragraph 2(a) to (i) inclusive, the demands that you submitted in Chicago.
A. Yes, sir. (a) reads as follows:
"(a) Employers agree to create and support a pension and retirement plan which will provide a monthly benefit of One hundred ($100.00) Dollars for employees who have been engaged in the industry for twenty (20) years or more.
"(b) The employers shall be bound by and act in accordance with the provisions of the Safety Code which is appended hereto. For any infraction or violation of the Safety Code, the employer shall pay into a fund designated by the Union the sum of Five hundred ($500.00) dollars for each infraction or violation.
"(c) The Employer shall not require any employee to operate any equipment owned by any Contractor or other person or persons with whom the Union has a dispute, nor shall the employer require any employee to work on any job where such equipment is in use or operation."

Q. Wait a minute. Tell me the effect of that. Tell me how all-inclusive that is. If Smith rented equipment from Jones, and the union had a dispute with Jones, even though (2816) Jones had a yard up here in North Philadelphia and this job was in Delaware, the Delaware job would be tied up; is that it?

A. If this was agreed to, the employer wouldn't require our members to operate the equipment.

Q. It would mean that you could tie up a job in Delaware because you had a dispute with somebody in the yard in North Philadelphia; isn't that it?

A. It might conceivably have been, yes, sir.

Q. All right, go ahead.

A. "(d) An oiler or fireman must be employed in the operation of concrete mixers under one-half yard capacity."

Q. Under one-half yard?

A. Yes, sir.

Q. Are you talking about a mechanically operated one?

A. Yes, sir.

Q. All right, go ahead.

A. "(e) An engineer must operate all mixers greater than one-half yard capacity."

Q. Now read the two of them again. You see, I am not an expert on this equipment, so I have to be educated. Now read each of them again and carefully.

A. Yes, sir.

(2817) "(d) An oiler or fireman must be employed in the operation of concrete mixers under one-half yard capacity.

"(e) An engineer must operate all mixers greater than one-half yard capacity."

Q. All right.

A. "(f) An oiler or fireman shall be required on equipment in addition to that specified in the Contract when deemed necessary by the Union."

Q. And who in the union is to make that determination?

A. Well, I suppose, sir, it would have to be made mutually between the union and the employer or submitted to arbitration in the event no agreement could be reached.

Q. That doesn't say so, but go ahead, let us have the next one.

A. No, sir, these were subject for bargaining, though, sir, and I don't know what the ultimate result would have been.

"(g) When five (5) or more engineers are employed by any employer on any one project, a master-mechanic shall be employed."

Q. Go ahead.

A. "(h) Add following holidays:

"Washington's Birthday

(2818) "Armistice Day

"Presidential Election Day"

Q. Are they in addition to some others? You certainly had other days. What are they, paid holidays?

A. Yes, sir.

Q. That isn't all that you had? You already had Christmas, the Fourth of July, and so forth?

A. Oh, yes, this was to be added. It says, "Add following holidays."

Q. Go ahead.

A. "(i) All new mechanical equipment to be operated by engineers."

Q. Well, now, explain that to me.

A. Well, sir, there is constantly coming into the market new mechanical equipment, equipment which hasn't been in use on construction jobs. There have been occasions when the contractors take the position that even though it is mechanical equipment and it is in the jurisdiction of the operating engineers to operate all mechanical equipment, it should not be operated by the operating engineers if they could employ members of another craft receiving a lower rate who are capable of operating the equipment. That is why we wanted a clause in the agreement, not necessarily this particular wording, but a clause which would (2819) protect the jurisdiction of the operating engineers.

Q. You read (m) yesterday, so we don't need to go over

that today. That is where you tried to make a collective indivisible liability on all of the members of the contractors associations. Now, are there any others in there that you didn't ask the independents to include in their contract? Is there anything else in that document P-178 that was not included in or was not asked of the independents at the time the contract was signed?

A. Well, (j) was not included in the independent agreement.

Q. Well, read that out so I can hear it.

A. "(j) For any infraction or violation of the provisions of the agreement, the employer shall pay into a fund, to be designated by the Union, the sum of five hundred ($500.00) dollars for each such infraction or violation. The payment of such damages shall not effect the right to strike or any other rights and privileges of the Union."

Q. All right, anything else?

A. (l) was not included in the independent agreement, sir.

Q. Read that.

A. "(l) The Contract is to be signed by each and every employer and only by the designated official of the (2820) Union; in the event any new employer becomes affiliated with any of the three (3) Associations and desires the benefits of the Contract, the Union shall have the right to accept or reject any such new contractor from the benefits under the contract and such new contractor shall not become a party to the contract without the consent of the Union."

Q. Anything else?

A. That is all, sir, with the exception, of course, of the articles to be submitted to arbitration.

Q. These were not arbitrable demands?

A. They were not suggested at Chicago, sir.

Q. As arbitrable demands?

A. As arbitrable demands, yes, sir.

Q. Now, I just want to make fully sure that I quoted you

in substance. It seems to me that yesterday you read that at one meeting you explained to the members the power of a union, a local union, that had full autonomy within the scope of the International, as a member of the International. Did I quote you correctly that you at some meeting explained the rights of the local union within the International at or during this time?

A. Truthfully, sir, I don't recall that being in the minutes.

(2821) Q. Then I will have to find it, because I had a very distinct impression that you did say that and you read it out of one of the minutes yesterday, and I consider that important enough to stop right now and find it.

At one meeting you explained to the membership the rights and duties and obligations and the powers of the local union, an autonomous local union, within the scope of the International, and it came at a time that Carter was in the picture. Do you remember that?

A. I recall stating to the membership or to the Board that the local union had a right ——

Q. Don't tell me what you stated. I just want the fact that you did explain something.

A. Not as fully, I think, sir, as you indicated. I think we were talking about rights to strike.

Q. I don't want to hear anything about it yet, Mr. Underwood.

A. Very well.

Q. I just want to keep within the terms of the minutes. I don't want to put any undue burden on you, but within the limits of the minutes I do want something.

THE COURT: Will you gentlemen see if you can find it.

MR. FREEDMAN: My copies are in evidence, (2821a) sir. That is why I don't have anything on front of me. I would be glad to look for it if I may have the originals.

THE COURT: They are all right there. Hand them to him, Mr. Shuman.

(Exhibits handed to Mr. Freedman.)

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(2822) BY THE COURT:

Q. At page 2736. Let us go back a little bit. You were discussing the meeting of Halloran and Carter, "Suggestions by Carter."

Now, this is the minutes in handwriting of Lavery, Exhibits P-192 and 192-A. And it had to do with a report by President R. J. U.

I am going right through now, starting at page 2735. Those are the minutes of the meeting that I gave you the date of. Did I give it? I do not think I did. I just gave the number.

Executive Board meeting, August 4, 1952. I am starting at page 2735, at the top of the page. I (2823) want this so that you will get the continuity of it:

"Report by President R. J. U Meeting with General President—Local 150 office. General President impression Carter was to be observer only. Carter came to Chicago. also Jack Carter. Said Halloran agreed to Welfare Fund. etc., etc. Carter talked to Halloran from Chicago. Talked to Halloran at Philadelphia Airport. He arrived Tuesday.

"Suggestions by Carter. Halloran insists on meeting R. J. U. in hotel room. General President said much pressure by Howard McGrath, Governor Fine, Maurice Tobin. Thursday General President said to settle Welfare first.

"Halloran objected to Independent agreement. Like to have 49 contract. Objects to M. M. Clause." master mechanics. "No oilers truck cranes. Tide Water Clause Compressors. R. J. U. pointed out prevailing rates for area. Explained safety program, etc., etc. R. J. U. arrived in Philadelphia 1:30 P. M.

"Called by General President 2:30 P. M. Call from Halloran Friday—Meeting 3:30 P. M. He insists on arbitration —R. J. U. says 'No.'

"Call today from President Maloney, saying (2824) we would arbitrate."

R. J. U. says "No." After R. J. U., it is just plain "No," and nothing else.

"Could not see how it could be done. Explained strategy, etc., etc.

"General President very anxious for settlement. Underwood explains how pressure is being applied.—Going to be up to Executive Board and Members. Points how harmful it all can be, etc., etc.

"Explains how this contract must prevail, etc., etc. R. J. U. asks for General President telegram.

"General President tells Underwood to recommend we accept their terms.

"Motion by R. Walsh & McCormick.

"Explanation by R. J. U. about keeping everything belonging to us, within our jurisdiction—Pumps. Mixers. Etc. Etc."

Then you left something out:

"R. J. U. explains importance of our position, explains rights of Local Union."

Now, I want you to explain to me the rights of the Local Union that you referred to yesterday (2825) and that was referred to in that minute of that meeting. You tell me what you said are the rights of the Local Union.

A. Well, as nearly as I can recall, sir ——

Q. I am not asking you ——

A. I don't recall specifically.

Q. I do not ask you to recall word by word. I just want the substance of what you said.

A. I believe I said that the General President is delegated broad powers by the Constitution of the International Union. At the same time, an autonomous local union is guaranteed certain rights under the Constitution, and that in my opinion, the General President could not exercise his powers in disregard of the rights guaranteed autonomous local unions in such a manner as to nullify or de-

stroy those rights. I undoubtedly said that the local union had a right to strike; it had a right to negotiate its own contracts without interference from outside sources.

Q. And that is an absolute right? Is that what you told them? And is that what you thought? Let us take it first: Did you tell them that was an absolute right?

A. I probably never used that term, sir. But in my (2826) opinion, I felt it was.

Q. All right. Now let us get what your thinking was. Did you consider that it was an absolute right?

A. Yes. I believe it is an absolute right guaranteed to local unions, sir.

Q. And if on an over-all picture the General President disagreed with you, you feel you have the right to ignore his directions and continue on your own course and disregard a mandate from your International President under your own Constitution?

A. When that mandate, sir, or that order, was to the effect of destroying or nullifying the rights guaranteed to the local union under the Constitution, I felt that I had a duty and an obligation to follow the directive of the Executive Board of the local union and take such measures as they recommended to protect the local union's rights under the Constitution.

THE COURT: Read my question back.

(Question read.)

BY THE COURT:

Q. You can answer that yes or no. And I want a yes or no answer.

A. Yes, sir.

Q. All right, sir.

(2827) A. I would like to add an explanation, sir.

Q. You may make any explanation you want. I never cut a person off.

A. Yes, sir.

Q. You made an explanation that if you considered it destroyed rights, that you had the right to ignore the order and proceed in your own fashion. That is in substance what you told me, is it not?

A. I am sorry, sir. I certainly didn't intend it that way. I certainly mean that the Executive Board of the union and the membership agree ——

Q. Well, you were the President. You were the Business Manager.

A. Yes, sir.

Q. And there is no use in trying to fool around, Mr. Underwood. You exerted tremendous influence on that Executive Board. Now, you say that you took the mandate of the Executive Board, and another feeling might be created, that the Executive Board pretty well followed you. Now, there are two possibilities. So that is still up in the air and has not been determined. I assure you, it has not been determined, but nevertheless, there is that approach to it.

(2828) Now, did you consider that either the Executive Board or you as President and Business Manager recommending to the Executive Board, had a right to overrule the judgment of a national President who was looking at it from an over-all national basis, public-relation-wise and otherwise, and on the basis of that, he might make a determination that might be the wrong determination; it might have been based on wrong information given to him, but if made by him in good faith, you think you had the right to ignore it and refuse to follow his mandate if he told you to take certain actions as a constituent member of the International organization?

A. Yes, sir. I believe they had a right to do so, in the absence, sir, of any information concerning his motives, which we did not have.

Q. Then you considered—I am trying to be logical—you would consider that you would have the right to demand Maloney's motives and his purposes and reasons for put-

ting out an order and he would have to explain them to you before you would be bound by any order of his?

A. Not any order, sir, but ——

Q. The order that is in contest in this case?

A. Yes, sir. When I say, the order that he issues takes away the rights guaranteed to the local union, under the (2829) Constitution, I think that he is dutybound to explain to the membership fully why he is requesting or ordering them to do something not in accordance with their rights under the Constitution.

Q. We are talking about rights. With every right there is a correlative duty and obligation. You understand that.

A. Yes, sir.

Q. All right. Now, what is your obligation with respect to the International? That is the point I am trying to develop. And we do not seem to be getting very well along.

You are a member of an International body.

A. Yes, sir.

Q. You have a Constitution that embraces not only the national operation but the local operation; is that right?

A. Yes, sir.

Q. All right. Now, what do you know about the over-all picture in the United States outside of Philadelphia?

A. Well, I know very little personal knowledge, if any, sir.

Q. All right. What do you know about the over-all labor situation of the International Operating Engineers, politically-wise in Washington, and throughout the several states of the United States?

(2830) A. Only what you would read in the newspapers, I suppose. You get no reports from the International concerning those things.

Q. No. I rather assume you would not.

A. No, sir.

Q. But don't those factors enter into good labor relations throughout the United States, and good public relations for labor? Labor needs, as much as business, good public relations. You understand that?

A. Yes, sir, I certainly do.

Q. —because I have the feeling that if the public does not support labor, we are all in a bad way.

A. Yes, sir.

Q. Well, now, is that not the job of the national President, to know these things?

A. I believe it is the job, yes, sir, of the national President to know these things, but, sir, I believe that the national President also has an obligation to a local union to fully explain these things to a local union if that is the motivation behind acts which take away the rights of the local union. I do not think a local union should be penalized for complying with the Constitution. And that is what the local union was doing, sir.

(2831) Q. Was it or was it not? Isn't that the point of this suit? Maybe you were and maybe you were not. Maybe you were defying the Constitution. That is what the International says.

Isn't that the point of this case?

A. I believe they have taken that position, yes, sir. We were legally advised that we had a right to protect the rights of the union in the manner we did, sir.

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DEPOSITION OF WILLIAM MALONEY.

BY MR. FREEDMAN:

(1881) Q. Mr. Maloney, this letter is from Mr. John J. McDonald. Will you tell us who he is?

A. He is the Third Vice-President of the International Union of Operating Engineers.

Q. What position did he hold in the Philadelphia area within the jurisdiction of Local 542?

A. Third Vice-President of the International Union of Operating Engineers.

Q. Did he act in any capacity other than his capacity as Third General Vice-President?

A. He never was assigned to any other capacity.

Q. Was he acting as an observer in the area?

A. Well, I would say "yes".

Q. Did he have any assignment in that area?

A. I just answered that, that he didn't have any.

Q. Please answer the question, sir.

(1882) A. I said he was not assigned to any other office outside of Third Vice-President of the International Union.

Q. By whom was he assigned?

A. By me.

Q. Do all General Vice-Presidents get assigned?

A. When I send them to a District, yes.

Q. If you don't choose to send them to a District, that means they don't have an assignment?

A. That is right.

Q. If they do have an assignment, do they get paid?

A. They get paid, yes.

Q. Is there any salary which attaches to a Third Vice-President or any General Vice-President?

A. Yes.

Q. As such?

A. Yes.

Q. What is that, please?

A. $15,000. $15,000 a year.

* * * * * * * * * *

(1883) Q. He gets $15,000 a year?

A. Yes.

Q. Does he get any additional compensation for being assigned to the area where he was acting as observer, that is being assigned by you?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff.

A. Yes.

Q. What is that additional compensation?

A. He gets expenses of $25 a day.

Q. No other salary?

A. I would have to look the record up on that, Mr. Freedman.

Q. Mr. Maloney, would you say he would get his $15,000 if he was not assigned to any task by you?

A. That is right.

Q. He gets it just as a Third General Vice-President?

A. That is right.

Q. I will ask you at the first opportunity when this deposition has recessed, to determine whether he gets any additional compensation; will you do that?

A. I will get it for you.

Q. Thank you.

(1884) Did Mr. McDonald make regular reports in connection with his assignment in the area?

A. No.

Q. Was he required to?

A. No.

Q. What specifically were his duties?

A. He was sent in there for the direct purpose, in fact he was in there, he was sent in there originally to investigate the situation in Philadelphia, before Underwood was in there.

Q. When did he first go in?

A. I would have to look for that. I would have to look the record up to find that out for you.

Q. Can you give us an approximate idea?

A. Well, sometimes about, I am guessing now, 1947 or 1948.

Q. We won't hold you to the exact year. I will ask you also to get that exact information and furnish it to us, please.

A. I will try to get it for you.

Q. Thank you.

Now, will you give us the specific duties which are assigned to a man when he goes into a region which was (1885) assigned to Mr. McDonald, specifically in that region?

A. He was originally sent down there to investigate the conditions in 542, when Mr. Jasper White was in there. That was his original assignment.

Q. You continued him in the same area?

A. He stayed in the same area, yes.

Q. You haven't given me his duties yet. I want to know what he was supposed to do when he was first assigned and thereafter during the period of his tenure in office there.

A. I thought I explained that, but I will. He was sent down there for to expressly find out the conditions in 542 when Mr. Jasper White was in charge of the Local Union, and what was causing complaints to come into this office.

Q. In 1948 or 1949, 1948, an election was held and Mr. Jasper White was ousted, wasn't he? The new President, the Local elected a new President, a new regime was set up, is that correct?

A. I don't believe that Jasper White ran for office.

Q. In any event, whether he did or whether he didn't, the Local elected new officers?

A. That is right.

Q. Supervision was terminated at that time?

(1886) A. That is right.

Q. And that was under a Court decree, I believe?

A. It was not.

Q. Under a stipulation filed in Court.

A. If I had known the stipulation was filed in Court, I wouldn't have agreed to it.

Q. I see.

Thereafter, Mr. McDonald continued in the same area, didn't he, continued to remain in the same area?

A. He remained in the same area.

Q. What were his duties, then?

A. He wasn't assigned any duties out of this office.

Q. Was he free to go any place that he wanted?

A. That is right.

Q. Could he have gone to the San Francisco area had he desired?

A. That is right.

Q. Without any advice?

A. He would have to ask permission so he could get his expenses.

Q. Without that he could go to any area in the entire country?

A. That is right.

(1887) Q. You had no control over that whatever?

A. None over that.

Q. You did not have any control over that whatever, is that right?

A. No, that is right.

Q. You mean that Mr. McDonald remained in the area of his own volition?

A. That is right.

Q. Until what date?

A. Well, I will have to look that up for you, too.

Q. Can you give me the approximate time?

A. I believe he left there in 1952, or sometime, I don't know just exactly what.

Q. Why did he leave?

A. I assigned him to another District.

Q. Where?

A. To San Francisco.

Q. Why?

A. The Pacific Coast, the West Coast.

Q. You assigned him to the Pacific Coast?

A. The Pacific Coast.

Q. Did you assign him to any other District before that time?

(1888) A. No, not that I can remember, some particular question; I assign so many people to a local dispute, I can't tell whether I assigned him to one or not.

Q. Why did you assign him out of this territory?

A. Because we needed a man on the West Coast.

Q. You say "West Coast"; what part of the West Coast?

A. From the southern border to the northern border, in as far as Arizona and Salt Lake City, a line there.

Q. What are the limits of his jurisdiction now?

A. From one end of the border of the United States, the southern to the northern border, and as far inland as Salt Lake City.

Q. Is there any other Vice-President assigned to that area?

A. There is a Vice-President in that territory, yes.

Q. Does Mr. McDonald's jurisdiction cover the area covered by another Vice-President?

A. That is right. There is two in there.

Q. Who is the other one?

A. Mr. Swanson.

Q. Wasn't he able to handle the job?

A. No, he wasn't, because he is running a Local Union. It kept him pretty busy taking care of his Local Union without taking care of the responsibility of the International (1889) Union.

Q. I understand because Mr. Swanson wasn't able to take care of the job, himself, you assigned him to the local area?

A. Yes, one of the men.

Q. You say one, anybody else?

A. Yes, we have three or four more out there.

Q. Did Mr. McDonald have any other duties other than those relating to 542?

A. Once in a while we would give him a case to look after stationary Local Unions down there, surrounding territory.

Q. That was occasionally?

A. Yes.

Q. Anything other than that he had to occupy himself with? Was there?

A. No.

MR. FREEDMAN: Do you want to repeat the question which the witness asked me near the bottom of 54?

(1890) A. Could I ask you a question?

Q. On the record. You can ask me anything you want, Mr. Maloney. I will be glad to try to answer anything I can. It has to be on the record.

A. Has Mr. Underwood a copy of these letters?

Q. I think you will have to find that out in the usual way, probably.

A. I was trying to save a little work for this office is all.

Q. I think you know these are letters from Mr. McDonald to you. Certainly he wouldn't have any record of them.

A. That is not my opinion.

Q. Did you ever ask Mr. McDonald?

A. I am asking you, just to save a little work.

Q. You know that. Your counsel knows there is a definite way of getting that information, if you want it. I wasn't there. I wasn't there at the time. Was it the custom for the Vice-President in the area in making reports to you to send copies to the local officials?

A. No, but when the local officials used his stenographer to write the letter, there is always a chance they have a copy of it.

Q. If he did it improperly?

(1891) A. It might not have been improperly. He might have handed it to him for his information.

Q. You can develop that in the proper way. I wouldn't know, not to my knowledge, any way.

This letter which is marked Plaintiffs' Exhibit No. 2, is also a progress report concerning Local 542. Is that right, Mr. Maloney?

A. I tried to make it clear. He was just giving me the report of what he was doing in the territory of protecting local unions. This pertains a good deal to a local union down in that territory. It has no connection whatever with 542. I would say a report on conditions in that local union.

Q. Would you say that the project at the Morrisville Plant had no connection with Local 542? Is that what you are saying?

A. No, I would say the last two paragraphs of that letter refers to a stationary Local Union in that territory.

Q. Let me ask you this, Mr. Maloney. We have identified a very considerable number of letters of correspondence from (1892) Mr. McDonald to you. Did you at any time other than the one or two occasions which have been mentioned, write letters to Mr. McDonald?

A. Not unless they are in this file, I didn't.

Q. Did you write letters to anybody else regarding Local 542?

A. No, sir. I wrote to Underwood.

Q. The one or two copies of letters which are in the file are the only letters which came out of this office to or about Local 542?

A. I would say to the best of my knowledge, yes.

Q. Who would know? Who would have personal knowledge of that fact?

A. Well, if there weren't in the record, I'd have as much of it as anybody else, the knowledge.

Q. Do you have any personal knowledge of having sent any?

A. No.

Q. Having sent any correspondence or transmitted any memoranda?

A. The reason for that ——

Q. Please let me finish the question.

A. All right.

Q. Or transmitted any memoranda to anyone regarding the affairs of Local 542?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

(1893) A. No, sir. The reason there is not too many letters in there, most of our business was conducted over the telephone, especially the business that I am connected with with 542, a considerable part of it was over the telephone. There was word of mouth when Mr. Underwood came up here to see me.

Q. Don't you make any memoranda of any of your telephone conversations?

A. No.

Q. None at all?

A. No.

Q. Never?

A. No. Maybe very seldom, maybe once in a lifetime, maybe once in a year.

Q. There isn't one in 1951?

A. There probably wasn't any. Probably I didn't make any memorandums.

Q. I see.

Proceed with the file you have got there and let's get on with this thing then. Let's start identifying some of these papers.

The first paper in your hand you said was a petition of some sort?

(1894) A. Yes, Petition of Members dated August 6, 1952, making a request for a separate and independent charter to ——

Q. To whom is it directed?

A. Directed to me, General President.

Q. How many pages of that?

A. There is one, two, three, four, four pages in that one.

Q. What is the next one you are talking about?

A. For your information, for Mr. Freedman's information, all these are dated the same day, August 6, 1951.

Q. Is the petition signed, Mr. Maloney?

A. Yes; it has a signature on it.

Q. How many signatures does it have?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. There is notation up in the corner there. That's got one.

Q. That petition has one signature on it?

A. Yes.

Q. Whose signature?

MR. WOLFE: It is unnecessary for you to answer that, Mr. Maloney.

MR. WOLFE: I have not made any statement with respect to it.

THE COURT: Well, it is in there. Go ahead, (1895) put it in, Mr. Freedman.

MR. WOLFE: It is unnecessary for you to answer that, Mr. Maloney.

BY MR. FREEDMAN:

Q. You refuse to answer?

A. On advice of attorney.

Q. All right.

What is the paper you have got in your hand now?

A. It is a petition same date, August 6, 1952, with eight signatures on it, consisting of two pages.

(The document referred to was marked Plaintiffs' Exhibits 40 and 40-A for identification.)

Q. Will you go back to the other petition for a moment? Did you respond to that petition we have just marked, 40 and 40-A.

A. I don't believe I did, no.

Q. No response at all?

A. No. Outside of telling Mr. Underwood, the Business

Agent of 542, that I had the petition. That is the only response I made.

Q. When did you do that?

A. In, well, I probably had done it three or four times. (1896) The last time that I remember very distinctly was in July, about the 1st of July; might have been the last of June or might have been the second of July, 1952. That is the last time I informed him.

Q. I see.

MR. WOLFE: These are dated August 6, 1952?

THE WITNESS: Were they? Well, then I could very well informed him then. If they are dated August 6 we could very well have had them in this office before that, if my recollection is right.

BY MR. FREEDMAN:

Q. You are sure of your recollection?
A. Well ——
Q. All right. I will withdraw it.
Whose signatures are on that petition?

MR. WOLFE: That you need not answer, Mr. Maloney.

BY MR. FREEDMAN:

Q. Do you refuse to answer that?
A. On advice of attorney, I do, yes.
Q. What is that petition for?
A. Petition for a charter, separate and independent charter for the eastern half of the State of Pennsylvania.
Q. Did you make any response to that?
(1897) A. Not in writing to anyone.
Q. Is there anyone you spoke to about it? It was Mr. Underwood as I understand it.

A. Let me collect my wits here a little bit.

Q. Take as much time as you want.

A. I am not going to take too much time.

In July of 1952, Mr. Underwood came here with Mr. McDonald. We discussed the question in the Hamilton Hotel. I informed him there was a petition in this office. Whether this is the same one or not, I think I probably got mixed up with another one. But this petition, if I understand it right, I am trying to recollect, this petition was handed in after that meeting for a charter in the Eastern half of Pennsylvania, and I am sure that I informed Mr. Underwood, whether I informed him over the phone or not after we got this petition or not, I am not too sure.

But I would say it is generally customary with me that I inform the Business Agent in the Locality where the petition comes from.

Q. Did you take any action on it?

A. No.

Q. And it had eight names; is that what you say?

A. Yes, that is right.

(1898) Q. Eight signatures on it?

A. Yes.

Q. Go on to the next paper.

A. This paper I don't know anything about, outside the reading of it. It looks like some kind of a joint plan. It is dated August 18. There is no signature of any kind on it.

MR. WOLFE: May I see it a moment, Mr. Maloney?

This document is a copy of the stipulation of Counsel entered into in August of last year in the case before Judge Grimm, with which we are all familiar.

Among other things, it is in reference to Dr. Taylor as Arbitrator for the issues between the parties. It is a copy which was apparently prepared in our office, because I see it bears the initials of Mr. Trescher of my office. It is dated 8-18-52.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. What is the second paper?

A. It is the Receipt No. 36208, made out to Roy F. Wells, (1899) for August 4 and 11, for the week ending August 4 and 11th, for $5.00.

Q. Under what circumstances would your office accept money of that sort?

A. We didn't accept the money.

Q. You gave a receipt, did you?

A. We did not.

Q. Who gave the receipt?

A. I don't know. I am trying to solve the answer myself. I know it's not out of here. Is there such a person known as Brightbill?

MR. WOLFE: Yes.

THE WITNESS: That might be it.

MR. WOLFE: Brightbill is—what do you call him?

THE WITNESS: Business Representative.

MR. WOLFE: Business Representative in the Harrisburg area.

Do you know Mr. Brightbill?

THE WITNESS: Evidently on August 4th he was the representative of 542, under Mr. Underwood. I wouldn't know all of these representatives.

(1900) THE WITNESS: Notation on this next sheet says they were six receipts from a member that desires to transfer into 542.

In other words, he wrote to show that he was working up there on permit, paying this amount of money, and wasn't allowed to transfer into the Local Union.

THE WITNESS: In the first place, these receipts are illegal. We have a regular permit receipt printed form that the International Union sent out to the Local Union, that the Local Union buys for fifty cents apiece. They are supposed to be issued weekly to the members that are working under permits, not to charge over two and a half on any one permit.

These receipts are made out, some of them for three weeks, some for two weeks. I think one of them is for four weeks.

(1901) MR. WOLFE: That was in violation?

THE WITNESS: In violation of the constitution.

BY MR. FREEDMAN:

Q. What did you do about it?

A. We suppose, evidently we wrote a letter complaining about it.

Q. Where is the letter?

A. I don't know.

Q. Where would it be?

A. Where would it be?

Q. Yes.

A. I said we suppose. I don't know whether we wrote a letter or not. That automatically is taken care of by the bookkeeping department.

If called to their attention, the Bookkeeping Department probably never saw these receipts. They have been in this file.

Q. Who put them in the file?

A. Suppose by somebody in this office. They were sent in with this petition, if you will let me read the next petition for you.

Q. We will get to that in a minute.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. They were clipped on here in the start.

(1902) Q. Everything that goes in that file is supposed to be brought to your attention.

A. No; it isn't.

Q. To whose attention?

A. Somebody around the office here, Mr. Wharton or Mr. Hill. It wouldn't be brought to my attention necessarily. The only thing that would be brought to my attention if I approved. You ain't on that question yet.

Q. You want to talk about this paper you mentioned before? Will you please identify that?

A. This is a petition form of the International Union of Engineers has for the establishment of Hoisting and Portable Charters.

Q. What is the date of it?

A. There is no date on the top of the petition. But there is ten signatures on here.

* * * * * * * *

(1903) Q. For what area is it?

A. It don't state.

Q. When did it get in your office here?

A. No stamp on it.

Q. To whom is it addressed?

A. It is not addressed to anybody.

Q. Just for a charter, without designating any territory?

A. That is right.

Q. It could be anywhere in the United States for that matter?

A. That is right.

Q. Was there any response to that?

A. No.

(1904) Q. Proceed with the next paper.

A. I have the same type of petition, August 6, 1952, with two book numbers on three pages.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Does it show what locals those book numbers belong to?

A. No.

* * * * * * * * *

BY MR. FREEDMAN:

Q. Are the names on all three sheets?

A. The names are on two. The petition is on the first sheet.

Q. What is the next paper, please?

A. The next paper is the same petition as the previous one, dated August 6, 1952, with the same language in it. It has got one, two, three, and so on. It has 19 signatures on it. All have a number on them, but two. In other words, there are 17 book numbers on there.

Q. Do they show what local?

A. No, sir.

Q. Did you check to see whether the names on this petition are the same as the names on any of the other petitions?

A. No, sir.

(1905) BY MR. FREEDMAN:

Q. Mr. Maloney, did you have any knowledge at all of the 1949 contract that was entered into after the arbitration?

A. None at all.

Q. You recall the period during which Local 542 was under supervision until it was terminated by court order in 1948?

A. I remember—I know a little about it. When I got to be president, of course, they were under supervision. I just inherited that.

Q. When was that, Mr. Maloney?

A. And as far as—in 1940, September, 1940.

Q. September, 1940, you became president?

A. Yes.

Q. And it was under supervision then?

A. Yes.

Q. And you kept it under supervision until when?

A. Well, when I agreed to release it.

(1906) Q. You mean after the court action was started in 1947?

A. I agreed to release it and didn't know anything about the court action.

Q. You mean that you didn't know that an action was pending in the court here?

A. No. I knew that there was a complaint made by several members, but I didn't know there was a court action and haven't read the decision, if there is one in it, yet.

Q. Well, are you aware of the conditions which existed during the period of the supervision while you were president?

A. Just what do you mean by that question?

Q. Well, let me withdraw it. You actually withdrew supervision, or, at least, supervision was withdrawn in 1948, is that correct?

A. If that is the date, yes.

Q. Now, up until that time did you make any investigation to find out what the conditions were, to determine whether the Union was being properly managed?

* * * * * * * * *

THE WITNESS: Read the question, will you, please?

* * * * * * * * *

THE WITNESS: I would say that—I am perfectly willing to answer the question—that there was (1907) certain groups of members came to my office from 542 and complained about certain conditions in the Local Union. I

can't remember only one now that—I can remember two: a fellow name of Dawson and a fellow name of Carter—come to my office and we told them to go back and see what they could do to get control of the local, that I was going to put it under supervision, and especially I was going to put Mr. Jasper White out of office.

Now, there was a group of about four or five of them. I can't remember the other names. I don't know whether it is in my file or not.

Q. And you say that you did it voluntarily without any knowledge that a court action was pending?

A. That's right, as far as my knowledge is concerned. That is my belief at the present time. To the best of my knowledge and belief at the present time, that would be my answer to that.

Q. Now, let us get to 1949. Immediately after the supervision of the local was terminated, an arbitration was conducted for the purpose of working out a contract between the employers and Local 542, is that correct?

A. I can't answer that question for you, I don't know.

Q. Don't you have any recollection at all about that arbitration?

(1908) A. No, I haven't.

Q. How about the contract that was finally worked out as of May 1, 1949?

A. What do you mean by that?

Q. Which became, the contract which became effective in 1949.

A. I never read the contract.

Q. Did you ever hear about it?

A. I understood they had a contract. All local unions have a contract at some time. It probably was in our office, it probably went through the regular procedure and was probably approved by the General Office. I don't know that.

Q. Who approves them?

A. Why, that is automatic, if they come in and they are satisfied with the Local Union, the contract satisfies the Local Union, we look them over, and if there is nothing in there that interferes—people in the office. Mr. Wharton, Mr. Hill, or maybe the girl in the office, looks them over, reads them, and if there is nothing unusual in the contract, approves them.

Q. Don't you look at them yourself?

A. No, no, I wouldn't have a possible chance. I have to have assistants to do that. Then if there is anything in (1909) the contract they think is in the contract is illegal or irregular or anything like that, they bring it to my attention. Then I look at it.

Q. Do you remember that while the local was under supervision, or immediately prior to the time supervision was terminated in 1948 ——

A. See—could I just say something here before you ask that question?

Q. Please just answer questions, Mr. Maloney.

A. Well, I want to make a statement in here.

Q. Is it in answer to any question?

A. Yes.

Q. Well, go ahead.

A. You asked me if I knew anything about a lawsuit regarding supervision. I do now remember that I did get a letter from McDonald claiming that he had some attorney here by the name of—he was the attorney for the moving picture operators, I believe, in this town. And he did write and tell me that they had an attorney, and that he was consulting with a fellow name of Kelly, I believe the name was—just come back to me now.

Q. Is that all you wanted to say, Mr. Maloney?

A. Yes. I didn't want you to—you know, I made a statement I didn't know anything about it. That flashed (1910) through my mind.

Q. I see. Now, do you recall that in 1948 while the Union

was still under supervision that you submitted a series of demands for a new contract at that time, immediately before supervision was terminated?

A. I didn't. I don't know anything about it.

Q. You deny that your office ——

A. I wouldn't deny my office did, because I wouldn't know.

Q. You don't know anything about those demands?

A. No, I don't know anything about them.

Q. When I say demands, I mean demands for a new contract covering the area within the jurisdiction of Local 542.

A. No, I don't know anything about it.

Q. You don't know anything about it?

A. Not to my knowledge. It might have come out of the office. I don't know nothing about it.

Q. Well, will you tell me who in particular handled and has handled all of the affairs relating to Local 542 in your office?

A. It depends on when the proposition come in—when the question come in. We have two people there, Mr. Hill and Mr. Wharton. Either one of them might have handled it.

(1911) Q. Either one of those two?

A. Either one of those two might have handled it. Or at that time, I believe in 1948, maybe the secretary-treasurer probably handled it.

Q. Who is that?

A. Mr. Fitzgerald. He is probably the one that handled it.

Wait until I make a correction there, too, for you. I don't believe that Mr. Wharton was in my office at that time. I think he was in Pittsburgh. But we had a man name of Herbert Woods that handled a whole lot of that.

Q. What was his position?

A. He was a statistician and looked over contracts and stuff like that.

Q. Did he have any official position in the Union?

A. Just one of my employees.

Q. Mr. Maloney, don't you have any recollection that at that time—that is, in 1948 your office made demands for a contract which would put the Pennsylvania area on parity with New Jersey?

A. Never, to my knowledge. That could have been a possibility out of the office, I don't know. I am not denying it didn't come out of the office, but I didn't.

(1912) Q. Well, weren't you consulted in matters of this type, where policy problems were involved?

A. Sometimes, but that particular case, I wasn't, or to my knowledge I wasn't.

Q. During the period you had Local 542 under supervision until 1948, were you aware of what contracts existed in the area with the employers?

A. Not a bit. I didn't know nothing about any contract.

Q. You wanted that territory organized after the election in 1948, didn't you?

A. What territory are you talking about now?

Q. The jurisdiction within Local 542.

A. 542, certainly.

Q. Yes. And you made strenuous efforts thereafter to get certain contractors organized?

A. That's right.

Q. Now, in order to do that you had to know what contracts were in effect, didn't you?

A. Not necessarily. I knew that there was non-Union contractors. From what information I could gather, why, there was non-union contractors in the District, and I wanted them organized.

Q. How did you find out that there were non-union contractors in the area?

(1913) A. Why, complaints come into my office. Fitzgerald used to continually complain about them. I don't know where he got them. Carter used to complain about them.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. McDonald was the vice-president in charge of that area at that time, wasn't he?

A. He never was in charge of this area.

Q. Who was in charge of the area?

A. There wasn't any vice-president in charge of this area

Q. Well, was McDonald assigned to this area?

A. No.

Q. Where was McDonald, then?

A. McDonald, when he was around this office, he kind of took a position for himself in here to look over the territory. You are talking before 1948 or 1949 now?

Q. Before 1949.

A. Before 1949?

Q. Yes.

A. Why, McDonald was sent down here to see if he could help straighten out this question of Jasper White.

Q. Who sent him down?

A. I did.

Q. And when was that?

(1914) A. Why, I would have to look that record up to find that out. Sometime previous to 1948.

Q. Sometime previous to 1948?

A. Yes.

Q. Did you get reports from him regularly?

A. I wouldn't say regularly, no. Off and on you would get a report from him.

Q. And McDonald remained in this area until when?

A. Well, when the local went under supervision, McDonald's job was done as far as I am concerned in this territory. He had nothing to do with this local, and they knew it.

Q. And who knew it?

A. 542.

Q. Well, why do you say they knew it?

A. Well, because they—when you would go to settle anything, call up to settle anything, why, invariably, why, Mr.

Underwood would tell the contractor that we—speak about McDonald to him, why, he would say McDonald had nothing to do with this territory, "I am the boss here." I will say that.

Q. Who said that?

A. Mr. Healey.

Q. And who is Mr. Healey?

(1915) A. Mr. Healey is the contractor had the job out in the middle of the state.

Q. You mean he told you that about Underwood?

A. Yes, Underwood told him that.

Q. And that was after supervision was invoked in August of 1952, is that what you are talking about?

A. No, I am talking about the date between 1948—when did they do that job in? I would say 1950, 1951.

Q. When did they do what job?

A. That job up there for the Government, up on that Pentagon thing where they dig into the mountains there, took the rock out. I don't know what year it was. I don't keep track of the years they work on the job.

Q. When did you release McDonald from this area?

A. I never—when McDonald—after the local was under supervision, McDonald could have went any place he wanted to. I wasn't very much interested in McDonald because I didn't believe a whole lot of his reports. I had no confidence in him, and I didn't care where he went.

Q. Did you send him somewhere?

A. I did finally, told him to come to me, and he said, "I am no more good in Philadelphia," and he said, "Where will I go?"

Well, I said, "You can go to the West Coast (1916) if you want to, or you can go to New York if you want to, or you can go to the South if you want to." So he picked the West Coast.

Q. When did you first find out you had no more confidence in his reports?

A. Well, when I found out tha' the reports that he gave me, when different people would call up, when Carter would call up—I don't know where he got the information—and gave me this information, and Mr. Fitzgerald gave me this information, that somebody called him, why, I come to the conclusion that McDonald wasn't very reliable.

Q. When did these reports come to you?

A. I don't know. Sometime during this period. I can't remember.

Q. During what period?

A. Between 1948 and 1952.

Q. Between 1948 and 1952?

A. Yes.

Q. That is four years. And when was it that you finally decided you had no confidence in his reports?

A. Shortly after, it wasn't only a short time that he was in here, that the local was under local autonomy before he began to give me reports. It looked to me like he was trying to give me reports to make himself a job.

(1917) Q. Why did you wait so long before you did anything about it?

A. I didn't wait so long before I did anything about it finally. He decided where he wanted to go. He is a vice-president. I didn't want to get into a fight with him.

Q. Didn't you assign him to the West Coast?

A. I didn't assign him. He said he didn't want to stay in Philadelphia, so he picked the West Coast.

Q. Does he have a right to go wherever he wants?

A. No, he hasn't, but I let him go. He was very unreliable as far as I was concerned as an officer, so I didn't care where he went.

Q. What I am trying to find out is when you finally decided he was very unreliable, what day?

A. Shortly after the local got under local autonomy here.

Q. In 1948?

A. Yes. I began to read his reports and I knew that

ninety-nine out of one hundred or not ninety-nine out of one hundred, just a certain percentage of them were false information.

Q. I see. Well, did you call him on any of that so-called false information?

A. Why, no, I didn't call him on it.

(1918) Q. Why?

A. Because, what is the use of wasting the time with a fellow trying to write you letters telling you things is not facts?

Q. Don't you believe in bringing a man in when you think he is giving you false information?

A. Sometimes I do and sometimes I don't.

Q. You had him here for four years.

A. I didn't have him here for four years. He stayed here for four years, but I didn't have him here.

Q. You were getting reports from him for four or five years?

A. Well, reports come in the office, yes.

Q. And you thought they were false information?

A. A whole lot of them, yes, sir, yes.

Q. And yet you didn't do anything about it?

A. That's right.

Q. What was the information that you deemed to be false, particularly?

A. When he tells me the situation about the Local Union, what happened here, and what the Local Union was doing, how well they were behaving, and I would find out there was fights in the Local Union and everything else.

(1919) Q. You say that there were fights in the Local Union?

A. Yes.

Q. From whom did you find out that there were fights in the Local Union?

A. Mostly from Carter, mostly from Fitzgerald, either one of them.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. You say you found out from Carter that there were fights in the Local Union?

A. Yes.

Q. When did you find out from him?

A. Sometime during that period, I don't know.

Q. During what period?

A. From 1948 to 1952.

Q. Well, how would Carter know about it?

A. Well, evidently he had men in the Local Union—their judisdiction is right across the river here, and his men attended the meetings here.

Q. You say Carter attended the meetings?

A. I didn't say Carter. I said his men.

Q. Carter's men attended the meetings?

A. Wait a minute. That I don't know, but I am taking the proposition that his men attended the meetings and reported to him, because he called us up.

Q. Who, Carter?

(1920) Q. When was the first time he called you up about it?

A. Maybe in 1948, 1949, sometime in that period.

Q. Then did he call you up after that? What did he tell you the first time he called you up?

A. After—only told me how the local was running, how it was disorganized in the eastern part, or the western part of the state, I think it is. The eastern part of Pennsylvania—the western part of the state. Am I correct in that? I think so. Outside of these five counties, outside. What do you call that, the western part of Pennsylvania?

Q. No. You mean the western area of the jurisdiction of Local 542; is that what you are talking about?

A. That is what I am talking about.

Q. What in particular did Carter tell you about that area?

A. Told me it was unorganized, and the men wasn't getting wages, and half—wasn't organized, and half of the contractors wasn't organized.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Carter was telling you all this?

A. Yes, Carter was telling me all this over the phone, and so did Fitzgerald.

Q. Let us take Carter for a minute.

A. Well ——

(1921) Q. I will get to Fitzgerald a little later. How frequently would Carter tell you about these things?

A. Every once in a while when I would get talking to him. Might be a month, might be two months, might be two weeks, whatever time he happened to catch me in the office, or we happened to talk to him, or something else.

Q. Would it be on the telephone?

A. Yes.

Q. And what would you do when he would relate these conversations to you?

A. Well, I would generally sit down and write a letter, or try to write—if I didn't write a letter, I would tell him personally to try to get that part of the territory organized.

Q. To whom?

A. Either write a letter to Underwood or write a letter to—if I wrote a letter, I would write it to Underwood, of course, or call him on the phone, or when he would come into the office I would talk to him about it.

Q. Did you ever talk to Underwood about these fights in the Union?

A. I believe he told me himself one time he had a disturbance in the meeting where he quieted it down himself, where some of the members got up and made a speech, and some of his members attempted to throw them out, and he (1922) quieted them down. I think he told me that himself. I wouldn't tie that right on him, but I believe that's right.

Q. Is it on the basis of that statement that you assumed there were fights in the Union?

A. Well, that is one of the bases, yes.

Q. You said that Carter told you there were fights in the Union.

A. Yes.

Q. Did you tell that to Underwood?

A. Well, I don't know as I told him Carter told me. No, I don't think I told him Carter told me, but I did tell him, I am pretty near sure I told him there was dissension in there. I used to ask him repeatedly how things were going along every time I would see him.

Q. And what did he say to you?

A. Well, he generally sat down and tell me, why, things were going along pretty good, or if he had a complaint, he would tell me that one.

Q. Did Underwood tell you things were going along well or did he tell you things were going along badly?

A. That depended on what they were doing at that particular time.

Q. At any time that you remember?.

(1923) A. Yes, I think he told me both ways.

Q. When did he tell you they were going along badly?

A. The time he was trying to organize the Western District of this, the western part of this District and having trouble doing it.

Q. And what do you mean by having trouble doing it?

A. He couldn't organize them, because, the simple reason why, he couldn't get the men in the organization. They wouldn't join it. They were non-union contractors out there.

Q. Is that what you mean when you say Underwood told you things were going badly?

A. That's right.

Q. Was there anything else that was discussed that would indicate things were going badly?

A. You are asking me for to recollect a conversation, memory, three or four years ago, and I am not too good at it.

Q. Did you make any record of any of these things?

A. No, I didn't keep any records.

Q. You never kept any records?

A. Not to verbal conversations, no.

Q. What about Fitzgerald? What did he tell you?

A. Well, he told me that ——

(1924) Q. First of all, what is Fitzgerald's position in the Union?

A. General Secretary-Treasurer. Was.

Q. What is he now?

A. He died about a year ago, a year and a half ago.

Q. Oh, I see. And then Carter has died also, hasn't he?

A. Yes, he has.

Q. When did he die? Try to use your own recollection, Mr. Maloney.

A. Well, it was during our Board Meeting in Chicago last month. Now, we held a Board Meeting there the 29th, it must have been around August 1. I don't know just exactly what day he died. It was sometime at that period. From, maybe it might be anywheres from the 29th.

Q. So both of these men that you say told you about dissension in the Local Union are now dead?

A. I don't hear what you say.

Q. Both of these men that you say told you about dissension in Local 542 are now dead, is that right?

A. That's right.

Q. Was there anybody else who told you about dissension in Local 542?

A. I can't tell offhand, no. If I am not mistaken, Fitzgerald wrote a report on that, too.

(1925) Q. He did? Where is it?

A. It must be in the file, I guess. He made some comment on it, anyway. It is in the file some place.

Q. Was that produced?

A. I guess you got it here if it is in the file, yes. It was in our file, I know that. I remember it. His report to me about a condition down here on the river. On the ——

Q. What was the date of it?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. Sometime in 1950. May 23, 1950.

Q. May I see that, please.

A. It is marked here. You have already looked at it, I think. Here is comment. I want you to read it.

Q. Let me see it.

A. "The present situation is one of a long series of similar situations which have occurred over the past three years. Local Union 542 has repeatedly ignored suggestions and orders from this office and has consistently been uncooperative with the International Union."

MR. WOLFE: What is the exhibit number of that?

MR. FREEDMAN: Plaintiffs' Exhibit 237.

BY MR. FREEDMAN:

Q. Have you got the original signed by Mr. Fitzgerald?

(1926) A. That is the original right there. That is a memorandum he gave me.

Q. This isn't signed, is it?

A. That is the way they used to type his name.

Q. You mean his name is typed in?

A. That is probably the way he would deliver it to me. He would make a memorandum of it and put it in the file.

Q. Well, you mean this one —

A. Not all the time. When they make memorandums that way, they just give them to the secretary, and the secretary would, when he looks at it, read it, and then put it in the file.

Q. But this one isn't signed.

A. No, this one isn't signed. There is lots of them isn't signed. Memorandums.

Q. Were you familiar with this situation which occurred on May 9, 1950, which is referred to in this memorandum?

A. Some of it I am, not all of it.

Q. Did you investigate to see whatever work stoppage there was was justified?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. I—what happened there was that, I am pretty sure I called Underwood over the phone and asked him about the question. Merritt, Chapman and Scott, it was between (1927) them and the subcontractor. And I can't remember. He told me he would straighten it out. It dragged on and dragged on. In the meantime I went to Europe. And I got a couple of long-distance calls over about it, talking to Fitzgerald about it, to try to get it straightened out. Labor relations man from Merritt, Chapman and Scott at that time was a fellow by the name of Croner, if I remember right.

Q. Yes, you just read it.

A. No, I didn't read it.

* * * * * * * * *

BY MR. FREEDMAN:

Q. You didn't read the name Croner on here?

A. No.

Q. And yet you remember Croner's name?

A. Yes, I know Croner.

Q. Just from your own personal recollection?

(1928) A. That's right.

Q. I see. I am glad that your recollection is so good.

MR. WOLFE: Well, we don't care anything about your comments on the record. I am sure the Court ——

THE WITNESS: Would you like to know why I remember it so good?

BY MR. FREEDMAN:

Q. No, I will just ask you the questions.

A. All right. I can tell you the reason, if you want to know.

Q. Do you recall having received that memorandum when you alleged that it was first made? Did you ever look at the memorandum before?

A. Yes, I looked at that memorandum about—sometime after the meeting that you had where you looked over McDonald's reports.

Q. You mean here recently in Washington?

A. Yes.

Q. And that was the first time you saw it?

A. No, no. I saw the report before, but that brought it back to my mind.

Q. When did you see it before?

A. Probably shortly after I got back from Europe.

Q. And what did you do about it?

(1929) A. If I remember rightly, I called up—that particular report, the strike was settled when I come back, and I don't believe—outside of commenting, I think to Fitzgerald, that the strike was settled, and the men gone back to work, there wasn't much comment about it. I thought that his—I asked him about the last comment, and he said, "We don't get any cooperation from 542."

And I said, "Well, I will talk to Mr. Underwood."

Q. What were the merits? How long were the men out, do you know?

A. I would have to read that to find out.

Q. Well, go ahead, you can read it.

A. If it is on there. Well, they went out on the strike on May 11. I don't know when it was settled. I will have to find out. On May 18—now, according to the telegram, Mr. Underwood and Mr. McDonald and Mr. Leone and Mr. Croner, Mr. McDonald and Mr. Underwood agreed with Mr. Croner to have the engineers back to work on Monday morning, May 22.

Q. Well, that would be from the 11th to the 22nd.

A. That would be eleven days. They received a telegram on May 19, this letter says, from McDonald, that the men

refused to go back to work, and there was a letter sent by (1930) Fitzgerald acting for me as General President ordering them back to work.

Q. Now, do you recall what the strike was about?

A. Faint recollection it was a question about a non-union contractor getting a subcontract off the Merritt, Chapman and Scott.

Q. Did you approve of the strike?

A. I don't see any approval in the records of the strike.

Q. Did you disapprove of the strike?

A. Not that I know of.

Q. Now, do you recall, Mr. Maloney, that—will you put these down, please.

A. Wait until I finish reading this, will you?

Q. Go ahead.

A. If you ask me a question, I want to answer it.

Q. I was going to ask you another question.

A. I don't doubt that. You will ask a lot of them.

(1931) Q. Let the record show that the witness is making a careful study of the Exhibit P-237.

A. On May 23 the office reports that Croner reported and stated the men—that none of the men had returned to work. So when they went back to work, I can't tell by this record. It must have been after the 23rd, because they didn't go back on the 23rd. And they went out on the 11th.

Q. Do you recall, Mr. Maloney, that the 1949 contract that Local 542 had with the employers was scheduled to expire on May 1, 1950?

A. I know—I heard afterwards that it expired on May, 1950, but I know there was a contention there between the contractors and themselves. Roy told me it expired on 1950, and they told me—I think that discussion come up when I was talking to Halloran, and they said that the attorney Underwood had at that time, Mr. Kelly, signed an agreement extending it to 1951. Now, that is conversation that I get.

Q. I think you may be confused, Mr. Maloney. Are you talking now about this so-called addendum which is alleged to have extended the agreement for a period of two years instead of one year, as the local had assumed? Is that what you are thinking about? I don't want to confuse you.

A. I think maybe that is so. I think probably that is the idea in the back of my head.

(1932) Q. Let me get you straight on this. The 1949 contract came out of the arbitration under the direction of Mr. Feinsinger, is that right? You remember that, don't you?

A. No, I don't.

Q. Well, anyway, that contract was for one year; do you remember that?

A. Well, I remember they told me once afterwards, yes.

Q. Yes. From your present information ——

A. Yes.

Q. —that was so, wasn't it?

A. Yes.

Q. And then prior to May 1, 1950, the parties entered into negotiations for a new contract, is that right?

A. Yes, I know they were in negotiation for a new contract.

Q. And do you remember that the local stated that they had an oral agreement for a period of one year from May 1, 1950, to May 1, 1951?

A. That is the first time I ever heard the question of an oral agreement.

Q. You never knew anything about an oral agreement heretofore?

A. No. The first time I ever heard it.

Q. Well, what kind of an agreement did you think they had?

A. I understood they had a signed agreement, although I didn't see it.

(1933) Q. You mean an agreement that was signed before the effective date of the contract?

A. Well, what do you mean now, the effective date? If I am thinking right, it went into effect in 1950, and the agreement was made, whether you say it was made under arbitration—it was made—I am only thinking now what Mr. Underwood told me, that an agreement was made for one year. Whether that was made under an arbitration clause. I don't know, or don't recollect, anyway. It might have been told me. And that was for one year.

During that year—during some period during that year—what time it was, I don't know—I mean, I don't know the date—I am only quoting now, Mr. Underwood told me—that sometime during that period Mr. Kelly was an attorney for the local, or Mr. Underwood, and he extended the agreement, from what information I can get, which is very limited—I want you to know that—Kelly and Underwood, or—when I say Underwood, it might have been the local, it might have been the Executive Board. I am using him as a symbol in this thing. And Underwood told Kelly to go ahead and see if he couldn't complete the contract. The question came up about the Welfare Fund. I think the Welfare Fund was tied into the situation about getting the Welfare Fund straightened out. And during this meeting with Kelly and the contractors' association, I (1934) don't even know who sat in that—why, Kelly extended, or, as you say, made an addenda to the agreement extending the agreement for two years.

Q. Was Kelly under the rules of your organization allowed and authorized to do that?

A. I had nothing at all to do with Kelly. Kelly wasn't my attorney.

Q. No, I didn't ask you that. I said, under your constitution and bylaws was Kelly authorized to extend the agreement that way?

A. If the local gave him permission to do it. If the Local Union gave him authority for to sign the agreement to him. I don't know what else they could do.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Do you have any information that the local did give him authority?

A. No, I haven't. How I got the information, Underwood said he didn't give him the authority.

Q. Did you look into it at the time the situation first arose?

A. No, I didn't.

Q. Didn't you make any inquiry about it?

A. I didn't make any inquiry about it. They came down and told me afterwards about the situation. That happened, evidently, after the contract was made—why, this addendum was made after the contract was signed. That is my interpretation of it. It (1935) may be wrong.

Q. You mean signed by Kelly and by ——

A. No. I mean the contract made between Local Union and the contractors. After that was signed, then this addendum was made by Kelly.

Q. What contract are you talking about?

A. I am talking about the contract they made in 1950. Is that the contract you are talking about?

Q. Yes.

A. Well, that is the same one.

Q. Are you saying that there was a written contract before ——

A. That is my impression.

Q. I see.

A. I didn't see a contract now, understand. But that is my impression, there was a written contract and signed—and then Kelly was to try to straighten out the question of the Welfare Fund. I am quoting Mr. Underwood the best I can for the information he gave me, and that Kelly unbeknownst to him, and didn't find it out for a couple of months after the addendum was signed before he found it out, that Kelly had agreed to extend the contract another year. That is my ——

Q. Then I think you said before that Underwood told you that Kelly didn't have the authority of the local.

A. Yes, I believe he told me that.

(1936) Q. What position did you take at that time?

A. There wasn't any position I could take at all at that time. It was a Local Union matter between local contractors and themselves. If they seen fit to sign a contract under those conditions, why should I get into it? I can find enough trouble without doing that.

Q. Did they have the right to make their own contracts then?

A. Certainly they did, providing it complied with the constitution.

Q. Do you recall that there was a brief strike in May of 1950? That is, in Local 542 area.

A. What time was the St. Paul convention?

* * * * * * * * *

Q. For your information, Mr. Maloney, while you are on the stand if there is anything which isn't clear to you, I suggest that you make it known to me, and I will be very happy to clear it up in any way I can. While you are on the stand you are not supposed to discuss the matter with anyone. Do you understand that, Mr. Maloney?

(1937) A. That is all right.

Q. Now, what is there about this that isn't clear to you? And I will be very happy to try and explain it.

A. In the first place, there is nothing in my memory that says anything about that 1951 strike to me at all.

Q. Do you remember the time the injunction was handed down in the Court of Common Pleas here in about May of 1951?

A. I heard there was an injunction, but when it was handed down, I don't know, Mr. Freedman.

Q. Do you know anything about that injunction?

A. Not a thing. Just—I want to clarify that. What Underwood told me, that the contractors had gotten an injunc-

tion in the local courts, and they appealed—then they appealed to the United States District Court to have the United States District Court dissolve the injunction, or take it over, or take charge of it, or take authority, or take jurisdiction, or whatever you want to call it in the legal phrases, and that the United States District Court in my opinion, which was correct, refused to take jurisdiction, if that is the proper word.

Q. Did you make any inquiry about the cause of the injunction, or the reason for it?

A. No, I didn't.

Q. You didn't ask why the injunction was handed down?

(1938) A. No, I didn't, unless talking to Underwood I might have asked him that question, but I can't remember it at the present time.

Q. Didn't you talk to any of your representatives in the area?

A. No, I didn't, unless they were with Underwood at the time. The two of them might have been there together and I asked them.

Q. Weren't you interested in a matter which was so important as to involve an injunction against one of your locals?

A. Very much interested in it.

Q. What did you do about it?

A. I didn't do anything about it.

Q. Did you try to find out what it was all about?

A. Only after Underwood told me what the situation was, I was very doubtful in the back of my mind how an attorney like Kelly would make an addenda without the approval of Mr. Underwood or the Local Union. I couldn't see in my mind where an attorney could make a decision—could do that without the approval of a Local Union.

Q. Weren't you told that Mr. Kelly swore on the stand under oath that he didn't have the approval of Mr. Underwood, and Mr. Underwood didn't know anything about it?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. Yes, I think Mr. Underwood told me that.

Q. You know it is a matter of record, don't you?

(1939) A. I don't know that, no. I am telling you what Mr. Underwood told me.

Q. Well, what was your feeling in that situation, that the contractors were right or that the Union was right?

A. Why, I always supported the Union, right or wrong.

Q. What support did you give them?

A. Gave them all the support I could give them.

Q. What, for example?

A. They didn't ask me for no support on that particular question.

Q. Well, what support did you give them?

A. Well, after them talking to me about it, I tried to—talking to them, I tried to get it straightened out, but after the thing got mixed up the way it is, why, Underwood's statement to me, and I am quoting him, is, the best of my knowledge, was that if—the only thing we can do now is wait until the contract comes up next year and we will get even with them, we will show them.

Q. When did he say that to you?

A. Some time after that injunction was issued.

Q. Where did that conversation take place?

A. Washington.

Q. And what did you say to that?

A. What could I say to a statement of that kind? Only (1940) see what he could do about it. I was willing for to try anything to try to get it straightened out.

Q. What did you do to try to get it straightened out?

A. Me personally, I didn't do anything. There wasn't anything I could do. The court had issued an injunction. What could I do?

* * * * * * * * *

Q. Now, didn't you get any reports or any information

from anyone other than Underwood regarding the injunction or the Philadelphia situation which existed at that time?

A. Well, he used to come in the office with McDonald, and probably McDonald gave me the same similar information. Whether McDonald wrote anything about that or not, I am not—I can't give you that information now, I don't know.

Q. Did you take any position after you talked to them with respect to the validity of this so-called addendum?

A. After the injunction was issued, I told you before, I didn't—there wasn't anything I could do. And they agreed (1941) that there was nothing I could do, only wait until the following year.

Q. What I am asking you is whether or not you stated your position regarding the validity of the addendum at any time thereafter?

A. No, I didn't get into that at all. They told me that that was two months old before they found it out.

Q. Did you consider that the addendum which we are talking about was a valid document?

A. I never seen it.

Q. Well, you were told about it, weren't you?

A. That's right.

Q. Did you consider that that addendum was a valid document?

A. I didn't know, but the court evidently did, because they issued an injunction on it.

Q. Did you ever say that it was valid or invalid?

A. I don't believe I used those words at all.

Q. Well, did you ever say anything at all about the addendum, one way or the other, what you thought about it?

A. I might have commented on it, but I can't remember.

Q. And what was your position on it when you commented?

A. Any comment was for to try to get rid of it. I didn't believe in it, and I thought probably the local got a bad deal with the attorney, but they hired him and he was their (1942) attorney. Just like now you were the attorney and you entered into some agreement, that would be their deal between you and him. It wouldn't be my deal.

Q. Just so I understand you, Mr. Maloney, are you saying now that you believe that the local was bound by the addendum?

A. After the court decision, yes.

Q. Leaving the court decision out of it.

A. Well, the court decision was that there was a question in my mind—I may be wrong about this now—there is a question in my mind, that I didn't know anything about the addenda until the court decision came out.

Q. Well, did you ever make any statement thereafter, then, that you thought that the addendum wasn't legal or valid?

A. I am not in the habit of making decisions on legal questions because I don't know enough about the law.

Q. Do you know whether your office did?

A. Not to my knowledge. They might have. Now, not to my knowledge. I don't know.

Q. Well, once you learned about the injunction, did you take any steps to keep yourself informed?

A. Outside of asking a few questions once in a while from Mr. Underwood when he come to Washington, I don't believe I took any other steps.

Q. You didn't send any representative in on that, did you?

(1943) A. I didn't.

Q. Did you get any reports from any of the other representatives in the area that you have already mentioned?

A. On the injunction? I don't believe so.

Q. Or any of the conditions in Local 542 at that time.

A. Yes, there was a lot of questions between Mr. Carter,

every once in a while he would tell me something that happened in the Local Union.

Q. Even during this period?

A. Well, it seemed to be a little bit of dissension, whether it was right or not, I don't know, between, about Kelly making this decision. There seemed to be a question of mind, according to Carter's information to me, whether Underwood had given the authority or not.

Q. Where did Carter get all of his information, do you know?

A. Evidently he got it from his men around here. I don't know. That is not a statement. I don't know.

Q. How would Carter's men know about it?

A. Unless they attended the meeting. The men, you know, over in Jersey, probably Carter's men in talking to the men in 542, probably know more about the business of the Local Union than either one of us.

Q. Did you feel that that was important information?

A. Certainly I thought it was important information.

(1944) Q. Why didn't you send a representative down there to investigate it?

A. For the simple reason why, I thought it might work out.

Q. Even though you thought that there was dissension going on?

A. That's right.

Q. Now, Mr. Maloney, I want you to give me all of the information upon which you relied on the basis of which you found that there was mismanagement of the Local Union from the time Underwood took office.

A. Well, we got complaints from the contractors.

Q. All right. Start at the beginning, now.

A. All right. I am trying to. We got complaints from the contractors. First I would like to tell you that the order of International supervision outlines the different questions in that order. I want you to know that. And other times when ——

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. One, you got complaints from contractors, is that right? Now, what contractors?

A. Are you testifying or me?

Q. You are testifying, Mr. Maloney. You well know it, too.

A. Don't what?

Q. You well know it, too.

A. Well, I know that, but I want to know all about it, but I don't want you to tell ——

(1945) Q. I am asking you a question. I said what contractors?

A. I didn't say contractors, did I? You said complaints from the contractors. That is what I said.

* * * * * * * *

Q. Does that refresh your recollection?

A. I beg your pardon. I just didn't remember. Of course, I have one contractor in mind, a fellow up in this job up in the center part of the state, he had continuous trouble, and he would call me, and I would have him either call Mr. Underwood or call Mr. Underwood myself.

Q. Who was he?

A. A fellow by the name of Healey, S. A. Healey.

Q. What was the nature of his complaint?

A. He had different kind of complaints. One, that the men would walk off the job, or the business agent come up there and tell him all the things he would do if he didn't do such and such a thing, and they shut down his job one time because the men didn't show up, and the compressor was running without a man on it, and the man on it was sick, and they shut his job down and stopped his job because he didn't have a man on the compressor.

(1946) Q. Is that what he told you?

A. That is what he told me.

Q. Did he put it in a letter?

A. Oh, no.

Q. Did you make any investigation?

A. Called Underwood about it and asked him to try to get it straightened out.

Q. And what did you tell Underwood?

A. Told Underwood to see what was the matter up there. I told him the business agent up there was evidently off the track. He was either a new business agent or didn't know what he was doing, and for him to investigate.

Q. And what was the result of that?

A. The result was that invariably the job got straightened out.

Q. Were there any other complaints from this particular contractor?

A. Not as I know of.

Q. That is the only complaint?

A. Half a dozen along the same line.

Q. Now, what other contractors?

A. Outside of Merritt, Chapman and Scott.

Q. First of all, before we leave that one, given me the date, please, that that complaint was made to you.

(1947) A. I can't give you the date.

Q. Approximately.

A. During the period of the job. What the period of that job was going on, the date.

Q. Well, give us the date.

A. I don't know the date.

Q. Give me the year, at least.

A. I don't know the year.

Q. You don't even know what year it was?

A. No. I think it was 1951. I don't know that. That is just a guess.

Q. What other contractors made complaints?

A. No other contractors made complaints to me outside of Merritt, Chapman and Scott. They made their complaint about this river job down here.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. What was that complaint?

A. They complained the men wouldn't go back to work. I just read it to you from Fitzgerald's report, from May 11 to 23, they would not go back to work.

Q. Was there any other complaint there?

A. Not to me direct, no.

Q. Did you investigate the Merritt, Chapman, Scott complaint, too?

A. I turned it over to Mr. Fitzgerald to investigate it.

(1948) Q. What did you personally do about it?

A. I went to Europe.

Q. Now, I think you said that no other contractors made any complaints.

A. I can't recollect at the present time, Mr. Freedman.

Q. All right. Now, what other evidence of mismanagement do you have? You said that was one evidence of mismanagement.

A. Well, another one was that they elected themselves for a four-year term without getting permission from the General Office or considered the bylaws, to get the bylaws corrected. Another one was that every time that they had any dispute around here they got in trouble with the Building Construction Trades Council.

Q. Let us take one at a time. We will get to all of them.

A. You asked me and I am trying to tell you.

Q. All right, we are going to get to every one of them. You say they elected themselves for a four-year term.

A. That's right.

Q. When did you first find out about that?

A. I didn't find out about that until he made a complaint that he was elected for four years, that he said ——

Q. Who made the complaint?

A. I don't say he made a complaint, but he made a statement he was elected for four years after this dispute started.

(1949) Q. Who are you talking about?

A. I am talking about Underwood. That he elected himself for four years. I tried to find out where he got permission to elect himself for four years, and I couldn't find it out, because he never got permission from the General Office. To get permission from the General Office to change the bylaws, you got to get permission from the General Office, according to our constitution, to change the bylaws, and the bylaws was not approved by our General Office.

Q. And that is why you say he is holding office illegally?

A. That's right.

Q. Did you do anything about it?

A. I am telling you about it right now.

Q. I say, did you do anything about it when you first learned about it?

A. I am not so sure whether I did or not.

Q. When did you first learn about it? Give me the date on that, please.

A. Oh, sometime before we got in all this dispute here, and sometime before August of 1952.

Q. Place it a little more specifically, please.

A. I am giving you the best of my knowledge, Mr. Freedman.

Q. Sometime before August of 1952 is meaningless. How long before?

(1950) A. Well ——

Q. Was it a day before or a week before or a month before?

A. I don't know. It might have been a month before. It might have been two months before. I can't tie you down to a date. I didn't keep track of all these dates.

Q. Didn't you know about it at the time he was elected?

A. No, I didn't.

Q. Wasn't any report made to you of the elections?

A. No, not for four years.

Q. And you say that no one told about the election of four years until ——

A. As far as my knowledge is concerned, I didn't know.

Q. —shortly before you invoked supervision in August of 1952?

A. That's right. I wouldn't say shortly. Sometime before that.

Q. Was it a long time?

A. I told you, I don't know the exact time.

Q. Give me it as closely as you can estimate.

A. All right. Suppose we say three or four months. That is a guess.

Q. All right. And that is, you say, another evidence of mismanagement?

A. One of them.

(1951.) Q. All right. Now, what else?

A. Well, the affiliation and the contacts they had with the Philadelphia Building and Construction Trades Council; very unsatisfactory.

Q. Now, what did you think about the Building Trades Council?

A. I thought things like every other Building Trades Council, if you are going to belong to the labor movement, you ought to be all united in one organization. The Building Trades Council of this town, and also all other towns, all building craftsmen, what they have done is promoted the interests of the engineers in a lot of cases by unity of action, and there couldn't be no unity of action of the Building Trades Council with Local 542 out of it.

Q. Did you feel they were promoting the interests of the engineers in this area?

A. Not by staying out of the Council.

Q. I asked you whether the Building Trades Council in this area were promoting the welfare of the engineers during this period of difficulty?

A. When they were out of the Council?

Q. In and out.

A. When they were out of the Council, I don't believe the

Council was promoting them. When they were in, I think they (1952) cooperated with them.

Q. Did you ever criticize them?

A. Criticize who?

Q. The Council.

A. No, but I asked Mr. Underwood several times why he didn't belong to the Council.

Q. Are you aware of the fact that the Building Trades Council cooperated with the employers at the time the injunction was handed down?

* * * * * * * * *

"Q. Are you aware of the fact that the Building Trades Council cooperated with the employers at the time the injunction was handed down?"

A. The only information I have on that question is what Underwood told me.

(1953) BY MR. FREEDMAN:

Q. And what was that?

A. Something that, along the line that he couldn't get no cooperation out of the Building Construction Trades Council.

Q. Did you do anything about that?

A. Yes.

Q. What did you do?

A. In May of 1952—I am a member of the General Executive Board of the Building Construction Trades Council—members of the Council—officers of the Council come to Boston to the meeting complaining about a job out here in this territory that was non-union. In Levittown, I think is the name of the job out here. I am not sure of that, either.

And I asked them what was the trouble between the Building Construction Trades Department and the engi-

neers. I asked them that in front of several witnesses. And they thought—they said then that all the difference that they had was straightened out, and that Underwood had agreed to give them cooperation on this particular job, and they thought everything would be all right, and they thought that everything from there on would be proper.

(1954) I consulted Underwood about that situation, and he said he thought at that particular time everything was all right, and that he had made them come down off their high horse, and he thought everything would be all right then. Similar words to that effect.

BY MR. FREEDMAN:

Q. That was one year after the injunction, is that right?

A. In 1952. It that was a year afterwards, that is the year.

Q. So that between the time the incident arose in May of 1951 and the time of this incident you just described, one year elapsed. Did you do anything during that year?

A. No.

Q. You never took it up with the Building Trades Council to try to find out what the difficulty was between the Council and the Union?

A. Every once in a while I think Underwood, when he talked to me, I would bring the question up to him, and he would give me some kind of an answer. I don't really know.

Q. Did you take it up with the Building Trades Council?

A. I did not.

Q. Why?

A. Well, I didn't take it up with them. I was satisfied (1955) for to support the Local Union here in what their action was.

Q. You thought they were right?

A. Well, their statement sounded all right to me, and I let it go at that.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Why didn't you take it up with the Building Trades Council, if you thought they were right?

A. I didn't want to take it up with them. They were satisfied to stay out of the Council and wanted to do it. I found out all they were causing was dissension in May of 1952.

Q. You believed in the Building Trades Council, didn't you?

A. Believed in the Building Trades Council? Certainly, I believed in the Building Trades Council.

Q. And yet you had a controversy in May of 1951 which showed there was friction between them.

A. You are telling me there was friction in 1951 in the Building Trades Council and I don't know anything about it.

Q. You knew about it, didn't you?

A. How did I know about it?

Q. Didn't Underwood tell you?

A. Not in May of 1951, no.

(1956) Q. You mean you didn't know about it in May of 1951?

A. No.

Q. When did you first learn about it?

A. When he told me about it, after he told me about the injunction, which might have been November or December.

Q. Of 1951?

A. Of 1951.

Q. What did you do about it when you learned about it?

A. Like I always do, I wait for the Board Meeting of the Building Trades Council Department, so I can bring it up in front of the Board.

Q. Didn't you try to do anything in that time?

A. No, I didn't try to do anything in that time. I can't do it until the Board meets for to take action of that kind.

Q. But you didn't try to straighten it out beforehand?

A. No, I didn't, because 542, the information I was getting from Underwood, 542 was perfectly satisfied.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. You felt it was good information at that time?
A. I did at that time, yes.
Q. And you agreed with him?
A. What are you trying to make me say?
Q. I am not trying to make you say anything.
A. Well, according to your statement just now, I didn't say anything about agreeing with him.
Q. I say, and you agreed with him at that time that (1957) they were right?

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Q. You agreed with 542, did you not, that they were right in connection with their argument with the Building Trades Council?
A. In what way do you mean I agreed with them?
Q. You felt that they were right.
A. You mean I commented they were right?
Q. Yes.
A. Well, I didn't.
Q. Well, did you comment they were wrong?
A. No.
Q. You mean you remained neutral?
A. In that particular spot I kept my counsel to myself.
Q. And is that why you didn't do anything about it?
A. That might have been one of the reasons.
Q. Was anybody from the Council in touch with you at that time?
(1958) A. No, sir.

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BY MR. FREEDMAN:

Q. Shortly after the injunction was handed down, you knew that 542 had withdrawn from the Council?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. I would say in November or December when I found out, yes.

Q. You didn't know about it until November or December of that year?

A. I don't think so, no.

Q. All right. Now, what other evidences of mismanagement can you tell us, so far as existed in Local 542 prior to your order of supervision?

A. One of them was that the information I got that the lawyers was running the Local Union, for one question.

Q. All right. Let us take that. Lawyers running Local Union, is that right?

A. That's right.

Q. Where did you get the information from?

A. Well, I believe I got that off the phone, too.

Q. From whom?

A. From Carter.

Q. When?

A. Sometime in—before the order was issued. Shortly (1959) before the order was issued.

Q. Shortly before the order was issued?

A. Yes.

Q. How shortly? Weeks?

A. Oh, a week or two weeks.

Q. Did he say what lawyer?

A. Yes.

Q. Do you want to identify him?

A. Yes.

Q. Go ahead.

A. The fellow sitting across the table from me.

Q. Are you talking about me?

A. Yes.

Q. Did he say he had any objection to the attorney?

A. No, he didn't.

Q. What did he say about the attorney?

A. He said the attorney got in a meeting with the Gen-

eral Executive Board to draw this resolution up to present to the Local Union and walked up and down the floor and said, "Well, now, who else can we put in this thing to make it good?" And then decided for to draw the order up and have it ready in case anything happened, and in case there was a supervision order put out.

Q. He told you that I attended the Executive Board (1960) meeting immediately prior to the lawsuit, is that what you are talking about?

A. That is right.

Q. And that I made the statement that you just attributed to me?

A. That's right. He made it to me.

Q. Did Carter say he was there personally?

A. No, he didn't.

Q. Where did he get his information? Did he tell you?

A. I don't know.

THE WITNESS: He says you were there 8:30 in the morning.

BY MR. FREEDMAN:

Q. Tell me some more about that. He said I was there at 8:30 in the morning?

A. Yes.

Q. At the Executive Board meeting?

A. That's right.

Q. What else did he tell you about it?

A. He said you insisted on putting certain men in.

Q. Putting certain men in where?

(1961) A. Putting certain names in there and putting different claims in.

Q. Yes. What else did he say?

A. That is about all I can recollect. You get it over the phone, you don't pay too much attention to them until something comes up like this.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. All right. What other evidences of mismanagement can you give us?

A. Refusing to obey the order when I sent him the letter of August 11 to call off the strike.

Q. Yes. What else?

A. That the Local Union would go down to Washington to the Wage Adjustment Board and try to adjust their matters without consulting the International office, get themselves mixed up in with the Wage Adjustment Board, and then when they get mixed up and wouldn't get the approval of the wages, hand it over to the General Office to try to get them adjusted.

Q. Now, be a little more specific about that, will you, please. When did they go down, and what did they try to do?

A. They went down from the Local Union down here.

Q. Who is they?

A. Underwood.

Q. Yes, and who else?

(1962) A. I don't know who else he had with him. I wouldn't be surprised he had McDonald with him, too, when they would make a wage claim. They knew the rules of our organization, that we ruled the Wage Adjustment Board, it had to come through the International office, or the Wage Board wouldn't approve the wages. They got into that, maybe after getting it all stirred up, and then come over to the General Office to try to get it adjusted. Invariably the General Office straightened it out, too.

Q. You mean they didn't consult your office at all about any of these?

A. That's right.

Q. Can you tell me specifically just what incidents you are referring to?

A. I am talking about some of their wage adjustment scales.

Q. I want you to tell me specifically.

A. I can't do that, Mr. Freedman, because I would have to have a memory of all the things that happened in our International Union. I can't do that.

Q. When you invoked supervision you did it on the basis of certain evidences of what you call mismanagement.

A. You can read the order. It says in there what it is. You got a copy of the order here. I will read it for him.

(1963) Q. Well, I am asking you now.

A. Well, I am telling you to read the order.

Q. Well ——

A. It talks for itself.

Q. It so happens that I am asking you now to identify the incidents which you say are evidences of mismanagement. Now, you will please answer the question.

A. I did. I answered the question. I have told you that.

Q. Can you give us the incidents that you referred to when you said they went down to Washington to adjust matters themselves?

A. That's right.

Q. When did they go down?

A. Trying to get a contract through the Wage Adjustment Board. What the date is, I don't know. It was sometime in 1951, I would say; in the early part of 1952.

Q. And whom did they see down there?

A. Well, they evidently seen some Government agents down there that they thought they had some influence with for to get the wages approved.

Q. Well, where did you get this information?

A. I wasn't with him when they saw him.

(1964) Q. Where did you get this information?

A. I got this information from my—well, I got the information from Underwood himself, that he went over there and tried to get it adjusted.

Q. Did you object to it?

A. No, I didn't object to it, but I knew it was not the procedure, and I told him it wasn't the procedure of our International Union.

Q. What did you suggest then?

A. I suggested he bring it through the International office when he wanted things approved like that, so we could take it over there as a whole, because they would bury it over there if we didn't.

Q. When you learned what he was trying to do, did you give him any support?

A. Yes, I did. We went over and got his wages adjusted.

Q. When was this?

A. In 1951 and 1952.

Q. And you say he didn't keep you informed of what was going on?

A. That's right. Not until he got in a jam over there.

Q. How many instances can you recall where that was done?

A. Well, I am only guessing at that. It might have been (1965) two or three.

Q. What were the other instances?

A. Same thing.

Q. I mean when?

A. About the same time.

Q. Well, how many occasions would he have to go down there? On how many contracts?

A. I never went down there at all. My assistants used to go down. They were assigned to the Wage Adjustment Board for to take care of the affairs of the International Union.

Q. So that you are now speaking not from personal knowledge at all, are you?

A. Only what Underwood told me.

Q. And he told you he had gone down.

A. He had gone down in there.

Q. I take it then he wasn't trying to hide anything from you?

A. After he got into trouble and couldn't get it approved.

Q. When was it he came to you?

A. Sometime between 1951 and 1952.

Q. Will you state a little more specifically when it was?

A. I am thinking I am doing pret y good getting that close.

(1966) Q. You mean within a year?

A. No, the fall of 1952 and the spring of 1952. Within six or seven months.

Q. You mean the fall of 1951 and the spring of 1952, is that what you mean?

A. That's right.

Q. You can't place it any closer than that?

A. No, that is the best I can do for you.

Q. All right. What other evidences of mismanagement were there?

A. The Local Union not recognizing the International agreements without a long dispute and argument.

Q. Local Union not recognizing International agreements, is that right?

A. That's right.

Q. Tell us more about that.

A. Well, the International Union has, makes international agreements with certain contractors of the country that we guarantee no strike on our work. And for that, why, we are paid the wages and conditions and work union all over the country. When there was trouble down here, we find out that Local 542 would pull these jobs. And we would call and ask them to put them back to work, that we had an international agreement with the contractor, and they (1967) invariably give you a lot of excuses why they wouldn't do it.

In one particular case we had to get an affidavit off of the contract, and I am not sure whether we sent a copy of the affidavit to 542 or not. On this Koppers Company job they had a subcontractor name of—trying to think of the name, I can't think of it. But any way, we had an agreement with the Koppers Company, an international agreement, and we

couldn't get them to go back to work unless we got an affidavit off the contractor that he was a subcontractor of the Koppers Company and was entitled to work under the international contract. They took about, I say two or three weeks to get the thing settled.

We had another contract, I believe with—I can't think of the name of the contractor now—probably could look it up and find out—where we asked him why he didn't put him back to work, and he said that the contractor was a part and parcel of the Arbitration Committee around here, and he wasn't going to put them back to work. I believe it was Stone and Webster, I don't know, I am just guessing at that name. And that took a week or two to get straightened out. In other words, he didn't want— (1968) when I say he, I mean the Local Union under his direction didn't want to recognize international agreements, as far as 542 was concerned.

Q. Isn't it a fact that those contractors that you are talking about operated under the contracts in the Local Union areas?

A. They always do. In every place in the United States. That was a part of the international agreement.

Q. And when there is no contract with the Local Unions in effect, then there isn't any contract with the others; there is nothing to go by, is there?

A. Yes. The contract with the international agreement specifically states that they will pay the conditions as agreed to eventually. One of the conditions of the international agreement was they would go to work and keep on working and whatever the Local Union—not only 542, but any other place in the United States, whatever agreement would come to, they would have to pay the back pay if it was coming, or anything else. But they keep on working. The international contractor that had the international agreement.

Q. Do you have those agreements with you?

A. No, I don't have no agreements at all.

Q. I ask you to produce some of those standard agreements.

A. I guess they will send you one.

(1969) BY MR. FREEDMAN:

Q. Were you aware of the fact that these international contractors, or these contractors with whom you had international contracts, were taking advantage of the injunction?

A. No, I am not.

Q. Didn't Underwood tell you that?

A. No, he didn't. He never mentioned that to me.

Q. You were aware also that at the time of the injunction there was an independent contract in effect, wasn't there, in the same area?

A. You will have to ask Underwood that question. I can't answer.

Q. Didn't you know?

A. No.

Q. You had no information about it?

A. No.

Q. Carter didn't tell you anything about that?

A. No. Are you talking about 1951 now, or 1950, or 1952? Tell us what you are talking about.

Q. 1951.

A. 1951?

Q. Yes.

A. May of 1951?

(1970) Q. Yes.

A. I didn't know whether there was any independent contracts, no.

Q. Didn't you know that the independent contractors were paying twenty-five cents an hour more than what the association contractors were paying under the injunction? Didn't you know that?

A. Yes, I knew that. I don't know. whether—you are asking me if they were independent contractors. I know that a—all I know about that is what Mr. Underwood told me, that some of the contractors were paying twenty-five cents more than the contractors association that he had the dispute with. That is the complete knowledge that I had on that case.

Q. And you know the international contractors were operating under the lesser rate by virtue of the injunction, isn't that right?

A. I don't think so. That never was brought to my attention. But that is not the idea of the international agreement.

Q. You don't think that they were operating under the lower rates?

A. No, I don't. I can't see them violating an agreement that bad. Do you object to me talking to my attorney? (1971) How do you have to get information that way? Haven't I got the same privilege that you have?

Q. Not while you are on the stand.

A. I just wanted to see if we could get it fair both sides.

Q. We will see just what your standards of fairness are very soon, Mr. Maloney.

A. Well, I think it is pretty good. Get my word in ahead of time.

Q. Well, however, we will see what the court thinks about it later.

A. All right. I just got my opinion, is all.

Q. Are there any other evidences of mismanagement that you want to tell us about upon the basis of which you invoked your order of supervision that you can tell us about?

A. Did I mention the fact that the Local Union took us to court? That is one of the reasons.

Q. And was that one of the reasons upon which you relied in invoking supervision?

A. One of them.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Was that one of the stronger reasons?

A. One of the reasons.

Q. Do you understand the question?

(1972) A. Yes, I understand the question. I answered it, one of the reasons.

Q. Was it one of the stronger reasons?

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THE WITNESS: Well, I will ask the same question, what do you mean by strongest?

BY MR. FREEDMAN:

Q. Did you rely on that reason more or less than any of the other reasons?

A. It was one of the general reasons.

Q. Are you going to answer the question, Mr. Maloney?

A. I am trying to answer. I am not trying to evade any question around here if I understand it, Mr. Freedman.

Q. Do you understand that question?

A. I don't quite understand it. That was one of the reasons. If you are trying to get me to say it was one of the strongest reasons, I am not going to say so. It was one of the general reasons.

Q. I am asking you if you relied on it more or less than any of the other reasons?

A. Why, it was about the same.

Q. Any other reasons that you had, any other evidences of mismanagement upon which you relied?

A. One of the many reasons—one of the many reasons was (1973) that the Local Union tolerated and allowed unauthorized clubs to operate inside the Local Union. There was an order out four or five years ago, I believe after the local was taken under supervision, authorizing them to break up them clubs, which they didn't carry out.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. You mean social clubs?

A. They were clubs for to discuss the business of the International Union. The same thing they are used for now.

Q. What clubs are you talking about?

A. I am talking about the clubs in the City of Philadelphia. I don't know the names of them, one of them. I think one of them is the Triangle Club, and one of them I think is the Italian Club. I don't know the name of it. And I understand there is another one that I don't know the name of either.

Q. And you tried to break those up?

A. The International—our Executive Board ordered them broke up. It was against the policy of our International Union for us to do that. That was for two or three years, order.

Q. You say it was in effect two or three years before you invoked supervision?

A. Yes, sure. We couldn't get it broke up, so that is one of the reasons why we have to have supervision, to (1974) break it up.

Q. Did you ever issue any direct order on it?

A. Yes, there is an order from the General Executive Board on it.

Q. To Local 542?

A. Yes.

Q. What is the date of it?

A. I will have to look that up for you, too.

Q. Will you, please?

A. I don't believe we got it with us. It is an Executive Board order printed in our records.

BY MR. FREEDMAN:

Q. All right, Mr. Maloney ——

A. Could I ask a question here?

Q. No, you cannot. You can only answer them, unless what you want to say to in answer to any question. You will get an opportunity to ask all the questions you want when you get out of this room.

A. I just want to clarify the situation. Go ahead.

(1975) Q. What other evidences of mismanagement did you allege exist in 542?

A. The fact of the matter was that they went on strike for 102 days, one hundred and some odd days, I don't know whether it was 102 or not, and that the Building Trades Council of this city, men were on the street, and the fact that the Building Trades Council of the City of Philadelphia refused to work with engineering, hoisting and portable engineers, on any job until this matter was adjusted, so they could all go to work.

Q. All right. So that I get it straight, first you said—read it back to me.

(The answer was repeated by the reporter.)

BY MR. FREEDMAN:

Q. All right. Did you support the strike up to that time, Mr. Maloney?

A. Well, they were trying to get it adjusted.

Q. I ask you a question. Did you support the strike up to the time you invoked supervision?

A. Certainly I did.

Q. Well, what do you regard as the magic number of days that a strike should last?

(1976) THE WITNESS: What do you mean by magic?

BY MR. FREEDMAN:

Q. Well, is there any fixed number of days that you say a strike should run?

A. No.

Q. You say a strike shouldn't run 102 days?

A. To my knowledge, this was the longest construction strike in my history as General President in the construction industry. After repeated efforts for me to try to get it adjusted.

Q. Now, will you please answer the question.

A. I can't answer the question—I am giving you my answer right now.

Q. You think 102 days is too long for any strike to run, is that what you are saying?

A. In the construction industry, yes.

Q. In other words, if a contractor can hold out for three or four months, then you would say that the Union should fold up; is that what you are saying?

A. Under the conditions that existed in Philadelphia, I believe that the length of this strike was too long.

Q. Did it make any difference to you that the strike was (1977) just about won?

A. It made a whole lot of difference to me.

Q. Did you make any investigation to find out?

A. Yes.

Q. Whom did you make inquiry of?

A. From Underwood, from McDonald.

Q. And what did they tell you?

A. They told me on about July of that year—July, long before the first of July—first two or three days in July, I would say, in a meeting in Washington, if I would give them three or four days more the strike would be settled. And after the three or four days I told them—he called me up on a Tuesday—he called me long distance, and I believe he get me in Chicago.

Q. When was this?

A. About July 5th or the 6th.

Q. Of 1952?

A. 1952. And said that he would have to have a little

more time, that he couldn't settle it that quick. I said all right, we will give you some more time.

And every time I talked to him about trying to get the job settled, he wanted some more time. And every time I stretched it out, after telling him that in four or five days that he had to settle the strike or come to some (1978) kind of an agreement on it, he said he could settle it in three or four days. Then it drifted on from July 4, four or five weeks later before I took any action.

Q. Why were you so anxious to get it settled?

A. Because I wanted the men back to work. I was getting petitions from people that they wanted the local put under supervision, and I was getting letters from attorneys that they had a thousand members in—that figure maybe, I am just guessing at that figure. A figure around there—that he represented a certain group that wanted a new charter.

Q. And that is why you wanted to terminate the strike?

A. One of the reasons, yes.

Q. What other reasons?

A. The other reason, that I got a telegram from Governor Fine in the State of Pennsylvania asking me to use my good offices to try to get the matter settled; that in the period, the last two or three years since Mr. Underwood or the present officers—I don't know whether he mentioned Underwood's name or not—but the present officers of 542, there had been disturbance for the last two or three years since he had been in office, in the office of the Local Union; and he asked me if I would use my effort to try to get the men back to work, that it was a public (1979) necessity, and a lot of public work, and a lot of very important work around Philadelphia territory was tied up, and he wanted to get it adjusted.

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(1983) Q. Did you find out what percentage of the members in 542 were working and how many were on strike?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. I knew quite a lot of them were on strike.

Q. How many, would you say?

A. That is only a guess. I don't have the records. Only what the petition said.

Q. Did you try to find out how many of your men were on strike?

A. How many of my men were on strike?

Q. Yes.

A. The whole local was on strike, according to the petition. They had the job tied up.

Q. You mean none of the men in the local were working?

A. Oh, yes, they were working up here on a steel job up here in Buck County, I think is the name of it.

Q. Do you know how many men were in the local at that time?

A. Members?

Q. Yes.

A. No.

(1984) Q. Don't you have any idea at all?

A. I would have to look the record up to find out.

Q. You don't know whether it is five hundred or five thousand?

A. You are asking me for a figure, and I don't know. There might have been two thousand and there might have been four thousand.

Q. And of that number can you state how many were employed and how many were unemployed?

A. No, I can't.

Q. Didn't you ever get any information about it?

A. No, I didn't. I knew according to the letters and the information I had asking for the local to be put under supervision there were a lot of them walking the streets.

Q. You got no official information from anybody as to how many were working and how many were not working?

A. I got the letter, as I told you.

Q. What letters are you talking about?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. I also understood in this particular procedure that the men were picketing the jobs wasn't even members of our organization. They belonged to the longshoremen's organization.

Q. They were members of the Marine Trades Department, weren't they?

A. I don't know what the name is. The longshoremen —I suppose they are.

(1985) Q. And you were affiliated with them, weren't you?

A. Yes, sure.

Q. And they promised to give support to the local, didn't they?

A. I don't know.

Q. Did you try to find out?

A. I never asked the question.

Q. Before you answer the question, don't you think it is incumbent on you to find out before you speak so unfairly about these people?

MR. WOLFE: Well ——

THE WITNESS: I told you that ——

BY MR. FREEDMAN:

Q. What is your answer to that question?

A. The answer to the question is that they had men from the Marine Department picketing the jobs, which in my opinion wasn't proper.

Q. You mean you didn't want their support?

A. I wanted their support, but I didn't want them to picket the job. I wanted the engineers to show up on the job and picket.

Q. How many engineers were not working at that time?

A. I don't know.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Why don't you try to find out?

(1986) A. Where am I going to find out?

Q. You had plenty of representatives, didn't you? You could ask. Did you ask Underwood?

A. I don't know whether I did or not.

Q. You could have, couldn't you?

A. I could have asked him, yes.

Q. And he would be in a position to tell you?

A. I was very sympathetic with Underwood until July 4, with all the things he could settle. I believed pretty near everything he said.

Q. Let us get back to this evidence of mismanagement. What other evidences of mismanagement can you allege?

A. Well, the most—I wouldn't say the most, but one of the reasons was the uncooperative attitude of Underwood with the contractors. He had his mind made up. And I am only telling you what he told me—that he was going to make those contractors back up. He was going to put them out of business. He was going to make them get another organization. He was going to put the organization out of business. And I felt that that wasn't our business as a union trying to break up contractors' association.

Q. When did he tell you that?

A. He told me that two or three times. Told me that in Washington and told me in Chicago.

(1987) Q. What other evidences do you have?

A. That is about all I can think of.

Q. That is about all?

A. Well, all I can bring to my mind now, yes.

Q. And you relied on every one of these in invoking supervision?

A. Some part of it.

Q. Well, which part didn't you rely on?

A. Well, every one of them was a factor in the situation.

Q. That is what I am asking you.

A. Yes.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. You relied on every one of the reasons you are giving, didn't you?

A. Yes.

Q. And you can't remember any other reasons than you have given us?

A. I can't bring it back to mind at the present time, no.

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(1988) Q. Mr. Maloney, you said before that the Building Trades Council went on strike and refused to work with the engineers during the period immediately preceding supervision in August of 1952.

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BY MR. FREEDMAN:

Q. Did you say that?

A. I said something similar to that. Whether I said that or not, I don't know.

Q. Is that statement incorrect?

A. Well, I wouldn't say it was incorrect, no. I said something similar to that. But the record of what I said is on the record.

(1989) Q. Yes, that's right. How did you know that the Building Trades Council, or the members of the Building Trades Council had gone on strike and refused to work with the engineers?

A. I read it in the paper, for one reason.

Q. Yes. What is any other?

A. And I believe that I was in Atlantic City at the time, and I think that one of the carpenters' representatives notified me in the lobby at the Ambassador Hotel. I can't tell you his name, or which one it was. That is where I got it.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Well, is that the extent of your information about the strike of the members of the Building Trades Council?

A. If I am not mistaken it was—I was notified by somebody from the Building Trades Council that they had voted to refuse to work with the engineers. Who it was, I can't tell you at the present time.

Q. And where did you get that information?

A. I think I got that over the phone.

Q. From whom?

(1990) A. From somebody from the Building Trades Council.

Q. Don't you remember who it was?

A. No, I don't. It seemed to be common knowledge. Everybody knew it in Atlantic City.

Q. You don't remember who called to tell you about it?

A. No, I can't recall right now.

Q. Well, you don't just take calls from anybody that calls you, do you?

A. No, I don't. I take calls from anybody I know, but that don't mean that I got to remember everybody that does call me.

Q. What else did he tell you, this fellow who called you?

A. Well, most of my information come from this delegate from the carpenters, that the Building Trades Council refused to work with the engineers until such time as the strike was settled.

Q. Is that all that he told you?

A. About all, yes. That covered the whole subject.

Q. Why did he say they would refuse to work with the engineers?

A. Because they were walking the streets while the engineers were working on other jobs and hiring pickets from another Local Union and paying them, that wasn't affiliated with the Building Trades Council, to picket their jobs, to keep them from working.

(1991) Q. Did you make an investigation into that?

A. Yes, I did.

Q. What investigation did you make?

A. I made an investigation to find out whether the statement was true or not, and found out it was.

Q. What investigation did you make?

A. I asked Underwood who was picketing at the jobs, and I asked one of the people who was picketing the jobs, and I contacted the Maritime Council, and they told me they were picketing the jobs.

Q. Yes.

A. And getting paid for it.

Q. Did you demand that the Maritime Trades Department discontinue picketing?

A. Yes, I did.

Q. Whom did you make that demand upon?

A. On the man in charge of this District. I can't think what his name is now.

Q. Who was it, do you remember?

A. I don't know. I am saying I can't remember the name.

Q. And did he discontinue?

A. From what I know, I understand.

Q. What reason did you give him for telling him to discontinue picketing?

(1992) A. Because I didn't want that situation to continue, I wanted to get the strike settled.

Q. And you figured that by discontinuing picketing you would get the strike settled?

A. One of the reasons, yes.

Q. Did you feel that it was legal for the Building Trades Council members to refuse to work on any job where the engineers were working?

A. They could do what they wanted. They were on the streets, anyway. A lot of them were. About 6500 of them was on the streets at this particular time, and the jobs were being picketed by the Marine Industries Association,

and a certain amount of these people working up here in Buck County, and the 6500 of the Building Trades Council walking the streets. That was one of the main claims that the Governor had about some of the main projects around here being stopped.

Q. Now, where did you get the number 6500?

A. Got it out of the paper.

Q. I see. Did you check to see whether that number was right?

A. No, I did not.

Q. Do you know whether that 6500, or whatever the number was, do you know they were out of work because they were forced out or because they voluntarily refused to work?

(1993) A. I think they were forced out when the pickets went on. A union fellow don't go through the picket line unless he absolutely is starving or something like that.

Q. Let me refresh your recollection. Isn't it true, or weren't you aware of the fact that the Building Trades Council members just walked off the jobs where there were any engineers?

A. No, no, I don't remember that at all. That never was brought to my attention. If the pickets were on the job, they refused to go through the picket line.

Q. Who refused to go through the picket line?

A. The other Building Trades Council.

Q. Are you saying now that the Building Trades Council worked on every job where there were no pickets?

A. Well, I would—I can't prove that, but I would surmise that would be the case.

Q. Well, as a matter of fact, you said a moment ago that the members of the Building Trades Council simply refused to work with the engineers. Didn't you say that?

A. That is what they said.

Q. Yes. So that actually it was by their own voluntary act that they weren't working, not because they were forced not to work.

A. They wasn't forced at all. The fact of the matter was they put pickets up there, and they don't want to be charged (1994) with going through a picket line.

Q. Who put the pickets up there?

A. 542 hired the marine organization to put the pickets up there and paid them.

Q. We are talking about those jobs where the engineers were working. Where they were working there were no pickets, even you will appreciate that, won't you?

A. I guess that's right.

Q. On those jobs the other members of the Building Trades Council walked off, didn't they?

A. Why, my information they did. But I don't know whether it is true or not.

Q. On those jobs they walked off voluntarily without there being pickets?

A. Yes.

Q. Because they didn't want to work with the engineers.

A. No, they walked off the job to force the engineers to settle, where the other 6500 men were walking the streets. In other words, the Building Trades Council wanted to force the other men to work, which happens repeatedly.

Q. Where did you get this information?

A. Newspapers.

Q. Is that the information that you rely on?

A. No, sir. I know it is true, because afterwards—you (1995) asked me where I got it on the start. Afterwards a lot of people told me. I know they quit work.

Q. As head of this organization of the engineers, don't you think it would have been advisable for you to hold a hearing and take testimony, or certainly to hold hearings of all of the interested parties in your own organization to find out what the true facts were?

A. I done that two or three times.

Q. When did you do it?

A. I had Mr. Underwood in Chicago with the contractor trying to settle this dispute.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. This was before Chicago, wasn't it?

A. What was before Chicago?

Q. I mean all this business about the Building Trades Council:

A. No, no, it was after Chicago.

Q. Did you call him to Chicago for the purpose of finding out what the situation was with respect to the Building Trades Council?

A. I called him to Chicago, no, not the Building Trades Council—because I didn't know anything about the Building Trades Council at that time.

Q. Well, when did you learn about the Building Trades Council?

(1996) A. When they notified they wasn't going to work, which was two or three, or I don't know how many days it was before they started court action. I don't know whether it was one, two or three days.

Q. When did you hold your hearing with Underwood about this Building Trades Council?

A. I didn't hold a hearing with Underwood for the Building Trades Council.

Q. But a moment ago you said you did.

A. I talked to him about getting the job settled in Chicago long before that.

Q. We were talking about specifically the situation ——

A. I am trying to tell you what was in my mind. You are not going to put words in my mouth.

Q. I am not trying to put words in your mouth.

A. Yes, you are.

Q. I am trying to figure ——

A. That is what is in my mind. I talked to him about getting the strike settled in Chicago. I didn't know the Building Trades Council were going to strike.

Q. We will have to look at the record.

A. Well, look at it.

Q. We will. Did you make any investigation of the

charges which were made by the Building Trades Council in (1996a) your own Union?

A. I knew that they were out on a strike. The whole town was shut down. I know they objected to the engineers.

(1997) THE WITNESS: I know they objected to the engineers for the simple reason why—I know I would smile too if I were you—was objected to the engineers for the simple reason why they had been walking the streets right along for the last time. And when local—there was no use of my consulting Local 542 after I sent the telegram on August 11 ordering them back to work.

BY MR. FREEDMAN:

Q. You didn't deem it necessary to give your own people an opportunity to be heard about these charges to find out whether they were justified or unjustified?

A. That is exactly right. I told them to go back to work on August 11, previous, before these men went out on a strike.

Q. Without any hearing?

A. What do you mean, without any hearing? Underwood was in my office for two days.

Q. Didn't you believe what he told you?

A. Didn't believe what he told me?

Q. What he told you, yes.

A. I did believe it at the time, but when he got back to Philadelphia here he changed his mind.

(1998) Q. About what?

A. About settling the strike.

Q. And who told you he changed his mind?

A. I could tell by his actions.

Q. What actions?

A. The way he acted.

Q. The way he acted in what respect?

A. What action he took, yes.

Q. What action did he take that indicated to you that he had changed his mind?

A. Took—when he left my office ——

Q. When and where?

A. In Chicago.

Q. Yes.

A. I don't know the exact date, but I can look it up, at Chicago. When he left my office the understanding was he was to come back here and sit down with the contractor and the contractor was to withdraw the suit. They had two suits. They had a suit against the contractor and the contractor had a suit against him. Withdraw the suits and sit down in arbitration and settle the whole dispute. There were four little things left, and they are in my telegram in the record here some place, I guess you got it.

(1999) And when I called the next day, he said, "Why we couldn't do anything about it." He says we wouldn't do nothing. He said the contractor was stubborn. And then the contractor called me and told me he couldn't do nothing with Underwood. I sent him a telegram then to go to work. I would settle it. And then he called me up and he said—I got a telegram from him or a wire, I am not sure. I might have got a phone call or I might have got a wire, to define the four things in the agreement that he didn't agree to, and what was my basis for ordering them back to work, and I sent them a telegram covering that particular question. His telegram—I don't know whether his telegram or telephone message—but if it is a telegram, it is in there.

Q. Are you all finished?

A. Yes.

Q. Now, will you please be good enough to answer the question about the Building Trades Council. Nothing that you have said has anything to do with the Building Trades Council, has it?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. No, not at that time.

Q. And my question was directed toward the Building Trades Council, wasn't it?

A. That's right.

(2000) Q. Will you please answer it.

A. What is the question?

(The question was repeated by the reporter as follows:

"Q. Did you make any investigation of the charges which were made by the Building Trades Council in your own union?")

THE WITNESS: The answer is no.

BY MR. FREEDMAN:

Q. Now, Mr. Maloney, you said something about a complaint from the contractor by the name of Healey. Where is Healey located?

A. Well, he has got a job in New York, he has got a job in Chattanooga, and he has got a job in, I believe, in Oregon. He has got a job in Detroit, and he has got a job in—I don't know where else. He is all over the country.

Q. Do you know him pretty well?

A. Very well.

Q. Have you had any business dealings with him?

A. None whatever.

Q. Never?

A. Never.

Q. Did you ever directly or indirectly have any business (2001) dealings in connection with the purchase of a hotel?

A. No.

Q. In Chicago?

A. No. Reading Mr. Pegler's column aren't you?

Q. Well, if you disagree with him, why don't you make an issue of it?

A. Would you like to take a case of making him prove it? Would you like to be my attorney to make him prove it?

Q. I am sure your attorneys are as competent as anybody you can get.

A. I am asking you a question.

MR. WOLFE: Thank you very much. Now we are throwing bouquets at each other, Mr. Freedman.

BY MR. FREEDMAN:

Q. You couldn't get any more competent counsel than what you have got,

A. I ain't complaining about the counsel. I am asking you a question.

Q. Well, I am giving you the answer.

A. You might be the right man, you know. I am not trying to flatter you, either.

Q. You have got the right man right now.

A. You know what that involves just as good as I do.

Q. Mr. Maloney, is it your contention that the local has (2002) carried on any strikes improperly?

A. Yes.

Q. I want you to tell me which ones and when and why.

A. I can't designate which one told me but my office was continually complaining to me that every strike down here was unauthorized. The constitution specifically states that you have got to have authority for to call a strike, and this local never had at no time asked it for the permission to strike.

Q. What provision of the constitution requires authority of the International to call a strike?

A. Anybody got a constitution? Article 23, Subdivision 11, Section 3, on Page 105 and 106 of the International Union constitution.

Q. May I see it, please. Are you trying to tell us that

this provision says that the Local Union has got to get permission of the International in every case before they can declare a strike?

A. That is what I am trying to tell you.

Q. Suppose you read it.

A. Suppose you read the whole thing.

Q. No, I am asking you to read it into the record. I want to be sure I get the language you are talking about.

A. "Nor shall any such action be attempted or taken (2003) unless the same has been sanctioned by the General President of the International Union."

Q. Is that the part you want?

A. That is the part I wanted, right there at the bottom.

Q. All right. Now, the first part reads "No Local Union through its committee, local executive board or business representative shall attempt to take or take any action involving a rupture of relations existing under a legal contract." Does that mean anything to you—"with any employer or declare a strike where such contract exists except upon the following reasons."

A. Read the reasons.

Q. Well, these reasons—I will put this whole thing in evidence.

A. Put it all in. That will talk for itself.

Q. You don't mean to contend for one minute that this requires consent of the International even where there is no contract?

A. Absolutely.

Q. Even as a layman —

A. That is my interpretation of it.

Q. Is that what your lawyers told you?

A. No, I have never talked to my lawyer about that.

Q. But don't you think you ought to ask your lawyers for (2004) a legal interpretation?

A. Well, I may do. I didn't ask him, but I am making that interpretation myself.

Deposition of William E. Maloney as on Cross-examination; Offered by Plaintiff

* * * * * * * * *

Q. Is that the only reason you considered the strikes improper or unjustified?

A. Yes, that is the only reason.

Q. Do you have a strike fund in the International?

A. Yes.

Q. How is that fund built up?

A. By a certain part of the per capita tax. They don't call it a strike fund. They call it a Defense Fund.

Q. Defense Fund. And that is for the purpose of successfully waging strikes, is that right?

A. Well, whatever defense your Local Union—sometimes it is not defense. Sometimes it is paying benefits to fellows locked out on account of other people striking.

Q. And what part of the per capita tax is taken into that Defense Fund?

(2005) A. Well, that is in the constitution, too. I don't know whether it is ten or fifteen cents.

Q. Out of each dollar?

A. Out of each per capita tax. The per capita tax of our International Union is seventy-five cents. Of course, they pay twenty-five cents extra, but that is exclusive to a death benefit fund. Twenty-five cents is separate. They pay one dollar, but there is only seventy-five cents went in there, and if I am not mistaken, it is ten or fifteen cents for the Death Benefit Fund.

Q. How much is in the Defense Fund now?

A. I would have to see the financial report to say that. Maybe there might be two million, three or four. I don't know the exact figure. Incidentally, when I took it, it was broke.

Q. And you built it up?

A. Yes, sir.

Q. Have you used any of it for any strikes?

A. Oh, yes.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Where?

A. Different places around the country. Just played one the other day up in Massachusetts. It wasn't a strike, either. It was a lock-out. The engineers in the steel plant there, CIO, and the CIO went out on strike, and (2006) these men were locked out, and we paid them strike benefits.

Q. Do the locals have the right to make their own contracts?

A. Yes, providing they comply with the constitution.

Q. Are the Local Unions in every respect autonomous?

A. Just what do you mean by that?

Q. You know what local autonomy means.

A. Yes, I do.

Q. Well, I am asking you whether the Local Unions have local autonomy?

A. They have local autonomy when they are not under supervision.

Q. Can the International Union force a local to take a contract against its will?

A. No.

Q. Mr. Maloney, when did the strike of May, 1952, first come to your attention?

A. I couldn't answer that for you, to give you a date.

Q. Well, tell me about. You know about when the strike started.

A. Well, I understand it started on May of 1952.

Q. May 1, 1952?

A. Yes.

Q. Now, when did you first learn about it?

(2007) A. Well, I can't tell you that. It might have been a week, two weeks, three weeks, something like that. Two week, maybe. May have been a week, might have been at least a week.

Q. How did you learn about it?

A. Probably somebody in my office told me.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. And what did you do about it?

A. What did I do? I didn't do nothing right then.

Q. You accepted it?

A. What do you mean, accepted it? I didn't do anything about it. Didn't accept it or reject it.

Q. You just let it take its course?

A. Yes, sure. Lot of strikes start out that way.

Q. And you don't remember who first told you about it?

A. No, I don't.

Q. Was there any memorandum made about the strike in the very beginning?

A. I don't know—you are asking me something that I don't know. Maybe I wasn't in town at all in May of 1952. I would have to find out where I was at. In May of 1952?

Q. That's right.

A. I am sure they didn't tell me then because I was sick.

Q. Well, when you got well—how long were you sick?

A. I was sick for three or four weeks. I had pneumonia.

(2008) Q. And when did you get well?

A. Well, I don't think I am well yet, to tell you the truth about the matter.

Q. When did you get out of bed?

A. About two or three weeks after that.

Q. Can you fix the date?

A. Oh, I would say somewheres around the 18th or 20th, something like that. That is about, offhand.

Q. Of May?

A. Yes.

Q. 1952?

A. That's right.

Q. And then did you go right back to work?

A. Well, I didn't go right back to the office, no. I got in touch with the office, and they told me there was nothing urgent, so I went to Hot Springs, Arkansas, to take a rest. The doctor told me to go there.

Q. How long did you remain there?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. Oh, ten days, two weeks.

Q. Were you in touch with the office while you were there?

A. Once in a while, yes, maybe a couple of times.

Q. Did you get any reports about the Philadelphia situation?

(2009) A. Not that I remember. Mr. Freedman. Of course, I might have got one, but I can't recognize it now. I didn't feel any too good, and I had other things to think about besides Philadelphia.

Q. Did you confer with McDonald before or after the strike started about the Philadelphia situation?

A. Never before, but after I did. I conferred with both him and Underwood.

Q. Well, now, when was the first time that Mr. McDonald reported to you anything about the situation in Philadelphia? The strike situation. The strike which commenced in May of 1952?

A. I haven't got the slightest idea.

(2010) Q. Did you make any record of your discussions or communications with McDonald or with Underwood?

A. No, I didn't. I didn't make any record of them. We talked half the night one time in a hotel. We didn't keep any record of that, either.

MR. WOLFE: You mean you and Underwood?

THE WITNESS: Underwood and McDonald and Wharton and Charlie Gramling and myself.

BY MR. FREEDMAN:

Q. When was this?

A. In the first part of July, 1952.

Q. The first part of July of 1952. And where was it?

A. Washington.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Sir?

A. Hamilton Hotel.

Q. In Washington?

A. Yes.

Q. What did you talk about?

A. About this strike. They come down to talk about it, Mr. Underwood and Mr. McDonald.

Q. And did they tell you about the whole situation?

A. Yes, they did, told me they could settle it in a couple of days. I told them I was very anxious for them to go back to work, to get the thing settled, and I didn't want to see (2011) a strike dragged out that long. He said he could settle it in a couple of days. I said all right, then, I won't do anything about it.

Q. Was that your only reason for wanting to have it settled, because it was dragging out too long?

A. That's right. One of the reasons.

Q. Weren't you being guided, or didn't you think that you should have been influenced by the fact that the strike was being successfully carried on?

A. Well, that is a question, whether it was successfully carried on or not. I was getting letters at that time, which I told Mr. Underwood that night, had about—I don't know whether it had one hundred or two hundred or something like that, from a man that wanted the local put under supervision, that it wasn't being handled right. I explained it to him and told him about it.

Q. Isn't the best way to find out whether it is being successfully carried on to find out how many unemployed you have?

A. That depends on the situation.

Q. Did you ask to see how many men were unemployed?

A. No, I didn't. Mr. Freedman, let me give you a little psychology in running an international union. You got the lawyer viewpoint. Let me tell you that you have to give the (2012) local man a lot of room and a lot of latitude

to see whether they can settle strikes or not, but when they go so far that you can't—they don't want to settle it, and it gets to be a personal issue to the point what this got in Philadelphia, where Mr. Underwood was mad at the contractor, and he wasn't going to settle it, and he told me flatly he was going to break the organization up, and he wouldn't be satisfied unless he done it, I thought that was going too far.

Q. Did you try to find out whether or not there was any possibility of success for the strike?

A. Yes, I tried to find out from Underwood, and they told me that they could settle it in a few days.

Q. I am talking about the strike.

A. I am talking about the strike, too.

Q. Now, when you talk about the success of a strike, doesn't that mean the winning of your demands, or a substantial part of them?

A. Substantial part of them it means, yes; not winning the whole demands.

Q. If your men can hold out, then you can carry on indefinitely, isn't that right?

A. Yes, but holding out at the expense of somebody else. Crucifies somebody else to help themselves.

Q. Who do you mean?

(2013) A. The Building Trades Council.

Q. What proof did you have outside of the newspapers that somebody was being crucified?

A. I didn't need any more. The Governor sent me a telegram asking me for to try to get it settled. You remember that.

Q. Is that what you relied on, too?

A. That is one of the things, yes.

Q. Is that the kind of proof that you relied on to determine whether or not Underwood and McDonald were telling you the truth?

A. There wasn't any other things to rely on. I brought

them in and got their side of the question, and they told me that they could settle it in a couple of days if I would give them a little more time.

Q. Mr. Maloney, didn't both McDonald and Underwood tell you that there was very little unemployment because most of the men were working for the other contractors?

A. They might have. I wouldn't deny that.

Q. So that as a result the members of this organization were waging a successful strike because they could hold out indefinitely, isn't that right?

A. No, sir. They told me that if I would give them a couple more days they could win the strike. In July, if we gave them— (2014) this statement can be substantiated— that if I would give them a couple more days they could win the strike, and I said all right. Then as I told you this morning—that was on a, I think it was a Wednesday, I believe, of the week—but Wednesday, we will say. Might say Thursday. One of the two, anyway. And then Underwood called me up on Tuesday and said now we got to have some more time. Some of these fellows agreed to go along has changed their mind on something.

I said, "All right, let's see what you can do. I will give you more time."

Q. Didn't you know that there was very little unemployment of your people; that is of your own members, during this strike?

A. No, I didn't know it.

Q. Do you deny that you knew it at that time?

A. Yes, sure, I do, with the letters I had there.

Q. Unemployment of your members?

A. I am talking about members of the organization that sent me letters. They are in the record here. You don't have to take my word for it. The record will talk for itself.

Q. Well, I would like to see some of those letters where they say they were unemployed.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. They say they were walking the streets, and they want (2015) to settle the dispute. It is in the file. Who the hell has got the file? I ain't.

Q. Then you deny that you were given any information that there was very little unemployment of 542 members during the strike. You deny that?

A. Are you testifying or me?

Q. I am asking you.

A. I didn't deny anything of the kind. I said it might have been told me. I didn't deny it.

Q. Let me get this straight. Did you know it at that time?

A. I don't know whether I did or not. I am saying if they say they told me, I will take their word for it.

Q. Then may I assume that you did know there was very little unemployment of your members?

A. You can't assume that. I said if they did tell me, I will take their word for it. Whether they did tell me or not, I can't remember, to the best of my knowledge.

Q. Don't you think that would be a major factor in determining whether or not the strike should be continued?

A. No. The major factor in the strike didn't have anything to do with people walking on the street. The major factor was Underwood trying to beat the contractors association and put them out of business.

Q. And that is why you felt he should be replaced?

(2016) A. No, no. I gave you some of the reasons this morning why I thought the local should be under supervision.

Q. What do you mean when you say the major factor was Underwood trying to put the association out of business?

A. That is exactly one of the things he was trying to do—I want to withdraw that if I said major. One of the factors.

Q. One of the factors in what?

A. Of trying to prolong the strike.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Did you know that a substantial number of contractors had already signed up—contractors who had been members of the association, had already signed up under the new agreement?

A. Underwood told me, yes.

Q. Did you believe it?

A. Yes, I did, yes.

Q. Didn't you regard that as evidence that there would be a successful termination of the strike?

A. No, I didn't.

Q. Why not?

A. Because there was a whole lot of work tied up around here, one hundred twenty-five million dollars worth of work tied up here that was stopped.

Q. Well, the immediate effect of that, as far as you are (2017) concerned, would be employment or unemployment of your members, isn't that right?

A. I am telling you, I was very much interested in the rest of the Building Trades Council around here to have an opportunity to work, too. They are building tradesmen, union workmen just as good as the engineers, and done as much as the engineers to build up the organization. We are only a small unit in the Building Trades Department.

Q. I take it from what you say that you do not care any more about your own members than you do about any other members of the building trades, is that right?

A. You can really put it the right language. Certainly I take care of my engineers at all time.

Q. You don't care any more that ——

A. Oh, yes, I do. The records shows that.

Q. If your members were working and if there was very little unemployment in your Union, why should you terminate this strike at their expense?

A. I wasn't trying to terminate the strike—I was trying to terminate the strike under the conditions what they were offered to them by the contractors. With the small differ-

ence of opinion, why not settle it? I was going to go to arbitration, too. We didn't have to give anything away.

Q. You knew, Mr. Maloney, that there was already another (2018) agreement in the area, didn't you?

A. That is what they said. I didn't see it.

Q. Didn't you see the agreement?

A. No.

Q. Did you ask for it?

A. No.

Q. Did you know how many contractors there were in the whole area?

A. No.

Q. Did you know that there were about 650?

A. No.

Q. Would you contest it?

A. What?

Q. Didn't you make any inquiry?

A. No.

Q. Didn't you know that about one hundred of the contractors who belonged to the associations were in this fight, and the other 550, approximately, had already signed up? Did you know that?

A. No.

Q. Would it have made any difference?

A. In fact, I didn't think the association had that kind of membership, to begin with.

Q. Would it have made any difference to you if you had (2019) known those facts?

A. It probably would.

Q. Don't you think that you were duty bound to find those things out before you interfered in local affairs?

A. I talked to Underwood and I talked to McDonald, and they gave me their version of the case. And I sat down with them and had a very amiable agreement with them. that they thought they could settle it in two days. They called me back. I have said this four or five times. They

called me back the following Tuesday and said they couldn't settle, that some of the contractors run away from them or left there, or didn't agree to sign or something, and then I gave him some more time to try to settle it. I wanted him to arbitrate it and get it settled, because the difference of opinion there was so small that it wasn't worth while to put anybody on the street.

Q. Don't you think that they were duty bound to find those things out before you interfered in local affairs?

A. I did find them out by asking Underwood and McDonald when they were in Washington.

(2020) Q. Then you did know about that?

A. About what?

Q. About the number of contractors who were already signed up during the strike?

A. They said they had some. They didn't give me the amount. Not to my recollection, they didn't, anyway.

Q. If you were running a Local Union, Mr. Maloney, would you have taken less than what you had already gotten from the independent contractors, who numbered about five hundred—when I say taken less, I mean taken less from the association contractors, who numbered one hundred.

A. You, by looking at the record of what happened since the local has been under supervision, you know the answer to that yourself without asking me. We got more, in my opinion, under arbitration than we would have got under the plan of 542.

Q. Do you know what the contract with the independents gave? Did you get more money than that contract?

A. They used the contract for the independents for some of the basis of the arbitration agreement.

Q. Did you get ——

A. That Mr. Underwood wouldn't participate in after being asked for to participate.

Q. Did you ask him?

(2021) A. No, but the supervisor asked him. Mr. Wharton.

Q. You were not there, were you, though?

A. No.

Q. Then you don't know what was said, do you?

A. I know he asked him, because them fellows tell the truth.

Q. Do you know the conditions that were attached to his asking him?

A. I don't know any conditions. I just got notified he refused to act, when he was on the payroll of the Local Union.

Q. Can you say that the arbitration, the results of the arbitration that you carried on recently through your supervisor got you more than what they had in the independent contract?

A. That's right.

Q. In what respect?

A. Both in respect for the wages and in back pay and conditions, in my opinion.

Q. And how much more did you get with respect to the wages?

A. Well, they had only—they made a difference between thirty to forty cents an hour in the helpers, in the apprentices, I should say, and they got forty cents an hour flat in the arbitration for the contractors—for the main engineers, and they got back pay to May 1. And I am satis-
(2022) fied if you hadn't of gave the back pay away we would have gotten more than May 1, too. I don't know who gave it away, but somebody gave it away.

Q. Now, you say you got thirty cents and so on?

A. We got forty cents.

Q. Forty cents. Are you trying to tell me now that that is more than what the Union had already enjoyed under the contract with the independents?

A. That is the information I got.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Well, what information did you get about the wage rates in the original contract, in the contract with the independents?

A. I didn't see the contract. I didn't see the agreement.

Q. What was told to you?

A. They told me they had only thirty cents increase for the independents, for the helpers, and thirty-nine cents for the engineers. We got forty cents across the board.

Q. So your information was that you got more in your contract now ——

A. That's right.

Q. —than what the independents' ——

A. That's right.

Q. —contract showed?

A. That's right.

(2023) Q. Now, you say that somebody gave away ——

A. Put on the twenty cents we got this year, too, without a strike, while you are talking about it.

Q. That was sort of after you got prodded a little bit, wasn't it, Mr. Maloney?

A. No, nobody prodded me. That is what you think, and that is what they told in their meetings around here, they prodded. Nobody prodded there, because we had a deal.

Q. What kind of a deal did you have?

A. We had a deal we would get as much as anybody got in the City of Philadelphia.

Q. What was the deal, and who with?

A. I think Mr. Wharton made it with the contractors. When you talk about prodding, you are patting yourself on the back.

Q. Did you make the deal?

A. No, but I understand Mr. Wharton did.

Q. What was the deal?

A. That they would get the same rate of pay anybody else got.

Q. When was that deal made?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff.

A. Along about May 1.

Q. Why didn't you get it when the others got it?

A. For the simple reason we wanted to wait and see what (2024) happened to everybody else.

Q. Did you get the same deal for all of your members?

A. Yes, I understand we did.

Q. The upstate boys, too?

A. Yes, I understand they got that, too.

Q. Are you sure?

A. Well, I tell you my understanding.

Q. Did you have anything to do with all of these things?

A. No, no, no. What the hell, I got enough to do without interfering with a Local Union—to make a wage scale for the Local Union.

Q. What are your duties, Mr. Maloney?

A. To operate the International Union.

Q. What do you do?

A. I am General President and I take care of all the Local Unions and take care of all their troubles, settle all disputes, if possible. I mean, internal disputes. And have charge of my organizers on the outside territory to organize certain men, and put them into the Local Union.

Q. But you have got assistants for all of that, haven't you?

A. Why, they are part of my duties, aren't they? Direct them what to do.

Q. Those things are done by your assistants, aren't they?

(2025) A. Yes, and I have got to direct them. What do you think I am doing?

Q. What do you do, personally?

A. Direct them, for one thing.

Q. Then I take it if you direct them you are supposed to know ——

A. And go——

Q. Will you let me finish my question. You are supposed to know what is going on?

A. That's right. And when I send them out to organize them, I know what is going on, and I know when they win a strike or dispute or National Labor Relations Board case or anything else.

Q. You know all about that?

A. Yes. I make it my business to find out.

Q. I see. Maybe we can get a little more information out of you in the future. You said something about the back pay.

A. Who is going to get it?

Q. You said something before about the back pay demand.

A. Yes.

Q. There was a demand for back pay in the last strike, wasn't there?

A. That's right.

Q. And you said that was given away.

(2026) A. That's right.

Q. Who gave it away?

A. You.

Q. I gave it away?

A. Yes. That is the information I got.

Q. Who gave you that information?

A. Well, I believe a gentleman by the name of Mr. Rhoads gave me that information.

Q. And did you want to give it away—you didn't want to give it away?

A. No, I didn't want to give it away, and I know if it hadn't been given away ——

Q. Yes.

A. —that we would have got considerably more back pay, too. I am satisfied of that.

Q. Did you feel that that demand for back pay was justified?

A. I did in a certain extent, certainly, I did.

Q. Why?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. Because I thought the men were entitled to it.

Q. Why?

A. Because some of the other fellows were paying it, and they should get it. On account of the injunction I thought they were entitled to it. That was the one redeeming feature that I wanted to stick with them on.

(2027) Q. Do you know what took place in the chambers of Judge Grim?

A. You know I don't because I wasn't there.

Q. Wasn't it reported to you?

A. They reported that to me, what I just told you.

Q. Then it was reported to you that I gave back pay away?

A. That's right.

Q. Well, fortunately, there was a whole roomful of people at the time this thing happened.

A. Well, I wasn't there.

Q. Did you make the statement that the suit in the federal court was discontinued so that you didn't have the opportunity to refute some of the charges?

A. No, never.

Q. Did you want to discontinue that lawsuit?

A. Never.

Q. You didn't want to?

A. What do you mean?

Q. You didn't want to discontinue the lawsuit in the federal court?

A. The one is in there now?

Q. No, the one that was brought before Judge Grim.

A. Did I want it to be dismissed? Is that what you mean?

Q. Yes.

(2028) A. I either wanted to try to dismiss it, because I knew there was nothing but fabrications in the lawsuit, and I didn't worry about it.

Q. Did you make the statement you didn't want it dis-

missed because you didn't get an opportunity to state your side of the case?

A. No.

Q. You didn't make that statement?

A. No, no, no.

Q. Are you sure about that?

A. I am pretty near sure about it. I am not that crazy. A case is dismissed without prejudice, or with prejudice, one of them, where they couldn't enter the case again, why should I make that kind of statement?

Q. Your position then is that you have never said that you did not want it dismissed because you wanted an opportunity to state your side of the case?

A. That is exactly right. As far as my knowledge is concerned.

Q. Now, were you approached by any of the contractors in connection with the strike that started in May of 1942?

MR. FREEDMAN: I suppose that should be 1952. May we have that correction made in the record?

(2029) MR. WOLFE: I have no objection. It looks like an obvious typographical error.

THE COURT: It is. Very well.

A. Just what do you mean by that?

Q. Did any of the contractors or their representatives communicate with you in any connection regarding that strike?

A. They never consulted with me until about two weeks before the strike, I should say, when I met Mr. Halloran. He come into my office.

Q. Two weeks before the strike?

A. No, two weeks before the strike ended. I should judge two weeks. I am only guessing at that.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Well, go ahead, tell us what happened and who was involved.

A. He came into my office.

Q. Halloran?

A. Yes.

Q. Alone?

A. No. He had a fellow bring him and introduce him.

Q. Who was the fellow?

A. Mr. McGrath, Howard McGrath.

Q. Did Howard McGrath ever communicate with you prior to that time?

(2030) A. No, he didn't.

Q. And you didn't know he was coming in to see you?

A. I knew he was coming in, but not what about.

Q. Did Howard McGrath need an introduction to you? Had you known him before that time?

A. Yes.

Q. And did anyone else call you?

A. Yes.

Q. Who was it?

A. George Meany.

Q. Why did he call you?

A. He called me and wanted to know if I would meet him.

Q. Did you ask him what it was all about?

A. Yes. He didn't tell me over the phone what it was about. He said, "Will you meet him?"

I said, "Certainly, let him come in." I said, "Incidentally, I will be in Washington in a couple of days, if he wants to wait."

He said no.

I said, "All right, let him come in."

Q. And what else did Meany say?

A. That is all he said. He didn't say any more.

Q. All right. You said McGrath and Halloran came in to see you together?

(2031) A. That's right.

Q. Is that the first time you ever saw the two together?

A. The first time I ever saw Halloran.

Q. McGrath?

A. No.

Q. I meant in connection with this controversy.

A. Oh. In fact, I didn't know what they wanted when they come in.

Q. And what was the first time you talked to them about this controversy?

A. Absolutely. The first time I ever met Halloran.

Q. This was in your office in Washington?

A. In my office in Chicago.

Q. Tell us what happened?

A. Well, he just come in. McGrath come in and says, "Here is a man, a contractor from Philadelphia, he wants to talk to you." He introduced me to him, the name of Halloran. When he said Halloran, I knew his connection, because in talking to Underwood and McDonald they had used the name Halloran, that Halloran had to get out of there, they couldn't do nothing with him at all.

So he sat down and I said, "What is on your mind?"

He said, "I would like to talk to you about (2032) that situation."

I said, "Listen here, there is no use talking to me ——" In the meantime, Mr. McGrath left the room. I said, "There is no use your coming in here to talk to me." I said, "I gather from my men ——" That was Underwood and McDonald—"that you won't sit down and arbitrate anything, you are just stubborn about this damn thing, and you don't do anything about it. So what is the use bothering me?"

So then he said he would be willing to sit down and arbitrate, and he wanted to get it settled, and he wanted to arbitrate it, just absolutely opposite to what they told me, and they wouldn't arbitrate and sit down, and they got in an argument and everything about it.

I said, "This is just contradictory to the information I got." I wasn't very polite to him, because I didn't have any faith in him, what these people told me. I said, "You can't have a meeting?"

He said, "No, I can't meet them."

I said, "All right, I will see about that, see who is wrong here in this case."

So I called Carter in Newark.

Q. Halloran said he can't meet them?

A. Halloran said he can't meet them.

Q. Go ahead.

(2033) A. And I called Carter in Newark and I told Carter to go in—first I told him to call Underwood, and then I told him to call Halloran and take them up to a room in some hotel here in Philadelphia and see if they couldn't adjust it between themselves. So he tells me afterwards that he called the both of them, and Halloran showed up alone at the hotel—I don't know what hotel it is, Underwood will tell you that. I don't know. And when Underwood showed up, he had the Executive Board with him, and then it wound up into another free for all. In other words, so Carter told me. And, of course, I don't like to quote the man—he is dead—but Carter told me, he said, "Underwood don't want to settle it, Bill. He don't want to settle it."

I said, "Well, now, we will see whether he does or not, see."

So after that meeting—then I got Underwood on the phone, and two or three days later, I think it was, and he could tell you better than that. I got him on the phone and he said, "Well, now, wait until I come in and see you and tell you what happened."

So he come into Chicago to see me.

MR. WOLFE: You mean Underwood?

THE WITNESS: Underwood. And he sat down and

(2034) started to tell me all about it. I said, "That is not the story I get." I said, "Let's get the story right."

He said, "You can bring anybody else in you want to."

So I called Carter on the phone, and then we adjourned that day, and went into the next day, and Carter was there the next day, and it was worse with Carter in there than it was by myself, because they differed altogether in opinion of what happened, and I am trying to get it adjusted.

So then I thought I will get a hold of the contractor, and I got a hold of the contractor on the phone—or I didn't get him on the phone. The office got him on the phone. And we come to find out he was out in the airport ready to come out here anyway. He was there the next morning. Well, we had two days of arguing, trying to get the job settled.

First it started on the work. Then we got it down to four little machines one day, and it looked like this thing will go off with a bang and everything, so Underwood come back the next day and he said, "We are interested in the Welfare Fund. We got to have the Welfare Fund adjusted." There was two different Welfare Funds.

And I said to Halloran, "What are you going to do with this Welfare Fund? It belongs to the men."

(2035) Q. What about it?

A. So, or words to this effect. Anyway, the settlement was that they would withdraw both suits they were talking about—withdraw both suits, go back home, and amalgamate the two Welfare Funds into one, and put it into—in fact, he agreed to take his Welfare Fund and put it into the one over here—I don't know what bank it was, Broad Street Bank, Broad Bank, I don't know. Anyway, the other Fund. We had the independent fund, and amalgamate it with that, and that is all there would be to it.

So I said, "Well, now, fellows, here: Why don't you go back to Philadelphia and settle this thing?"

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

He said, "We will.".

So they went back that day and they had the meeting the next day, and it broke up into an argument again. And then I wired—I don't know whether I wired Underwood or called him, and told him that, to settle the strike and going to arbitrate the four little points in this thing was all right, there wasn't enough difference about it to keep on tying up the town on that small amount of work and small amount of question about the arbitration, go into arbitration on that. I said, "You know the Welfare Fund is all settled. You don't have any other kick about that." So I said, "How about getting into a meeting and (2036) settle that?"

The next thing I got from Underwood for to send me—meantime I left Chicago and come to Washington. When I got to Washington, I don't know whether I got a telegram or a phone call from him, telling me to define the four questions that was in dispute. And I sent him a telegram to that effect, and it had no more effect than if I said anything.

* * * * * * * * *

(2037) Q. Who made up the telegram?

A. I did.

Q. Without anybody else's help?

A. That's right. There was nobody in the office but myself.

Q. And you made it up out of memory?

A. Why, certainly. I knew what the settlement was in Chicago—I mean what they agreed to in Chicago, to go back on. Certainly, I had no trouble.

Q. It was all on your memory?

A. It was only a day old then. My memory was only a day old.

(2038) Q. And at that time you had never seen the independent contract?

A. No, I never seen it. I haven't seen it to this day. So you can put that down, too.

Q. Did you have any copy of any other contract there with you in your office?

A. Now, you are bringing a question up that maybe the last answer wasn't correct. I think that Underwood did have a copy of some contract or—whether that was the independent contract or not, that we were talking about. And we also had a copy of the contract, of the 1950 contract, if I am not mistaken, at the meeting. That is where we were sorting out the different questions for to get them settled. Whether that was an independent contract or not, I am not here to say—I can't swear to that, but he had a contract with him.

Q. But you made up the telegram from memory, is that right?

A. That's right.

Q. With no help from anybody?

A. No, I didn't have to, because I left Chicago that day and I was in Washington the next morning when I got the telephone call or telegram, whichever it was. Hell, it was imprinted in my mind after arguing about it for two or three days.

Q. What instructions did you give Carter when you called (2039) Carter at the time Halloran and McGrath came in to see you?

A. To see if he couldn't get them both together and settle the dispute.

Q. Is that all you told him?

A. Yes, that's all I told him.

Q. Did you tell him to write a contract himself if he couldn't settle the dispute?

A. I didn't tell him anything of the kind.

Q. You told him only to go in and see if he couldn't get them together?

A. That's right, and sit there and see if he couldn't get

them two together. Of course, he might have used any pressure he could to try to do it.

Q. But your statement is you didn't tell him to do anything beyond that?

A. That's right. I told him I was very interested in getting the strike settled, and his answer to me was that nobody could do anything with Underwood, that he was the most stubborn man he met in his life. During the discussion with the contractor, I accused them both of being stubborn.

Q. You say Halloran was on a plane before you invited him to that conference in Chicago between you and Carter?

A. I didn't say he was on a plane. I understand they caught him at the airport. Let me explain this to you now (2040) so you will know. While we were talking about the thing we decided to get a hold of Halloran and bring him in and see if we could get it adjusted. That was Carter and Underwood and myself then. The three of us. So we called Halloran's office, and Halloran's secretary told the operator that he was at the airport. And I think Carter got him at the airport. It might have been me, I don't know, but I think it was Carter.

Q. He was already on his way to your office?

A. No, no, he was down at the airport, and he was going to fly into Chicago, so he had a reservation, and he come in there. I don't know whether we met him that afternoon or the next morning, I am not sure.

Q. He knew you were meeting even before you invited him or told him anything about it?

A. Evidently he did, yes.

Q. Do you know how he knew about it?

A. No, I didn't tell him.

Q. Who could have told him?

A. I don't know.

Q. Now, did anyone else speak to you in connection with this strike?

A. In what way?

Q. In any way.

(2041) A. Just it was the talk of the country around here, the strike, if that is what you mean. Tell me what?

Q. I want to know what people intervened with you to try to talk to you about it on behalf of the contractors?

A. None whatever.

Q. Nobody else?

A. Nobody else.

Q. Didn't anybody from the Department of Labor try to get in touch with you?

A. No, sir.

Q. Never?

A. No. The Department of Labor knows better than to do that.

Q. Did you ever have any further discussions with McGrath?

A. Never talked to him since.

Q. Never talked to him since that?

A. No time.

Q. You mean he only came in for a few minutes, introduced Halloran, and left?

A. Well, he stayed out in the outer office. I got an office —my office is the end of the suite in Local 569, and he walked out in the other offices. He didn't enter into the discussion either one way or the other.

Q. And didn't even hear what was going on?

(2042) A. I didn't think he did.

Q. And that is the last you ever heard of him?

A. The last he appeared in the case until you put him in the order.

Q. But he had nothing further to do with the case beyond that?

A. That's right.

Q. Did Meany ever try to get in touch with you thereafter?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. No. They asked me about the strike, and I talked to them, and they passed a resolution, as you know. They passed it themselves. I don't have anything to do with that Executive Board. And they passed the resolution and handed it to me.

Q. And that was after you invoked that order?

A. That is after you started the lawsuit.

Q. And that is the only information they had——

A. Well, not after I invoked the order. That was when you started the lawsuit.

Q. That is after you invoked the order ordering the men to return to work?

A. That's right. That is August 11 order, yes.

Q. And did the Executive Board that acted on this resolution hear both sides of the story?

A. Well, they asked me what the situation was and I told them, as far as I know, and they passed the resolution.

(2043) Q. And they didn't get any other picture?

A. No.

Q. Did you ask them to pass that resolution?

A. No, I don't think I asked them to pass the resolution. I told them my side of the question and they passed the resolution themselves. You know, them fellows, you don't ask them to pass them resolutions.

Q. Who brought the subject up?

A. It was a common subject around the hotel. The papers, it was in the papers. In fact, everybody in town knew about it, I think, before I did.

Q. How often did you see Halloran? After that one meeting in Chicago did you see Halloran thereafter?

A. Just what do you mean? I have met Halloran in—well, probably I have seen him two or three times.

Q. When did you see him after that first meeting?

A. After the first meeting?

Q. Yes.

A. Well, I seen him at the second meeting when Underwood and Carter and I was there.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Yes. When beyond that?

A. I think—I seen him in Atlantic City when I was down there.

Q. What was the occasion for that?

(2044) A. Just he was standing around the lobby, just see him.

Q. Did he just happen to be there?

A. I don't know. I think he has got a summer place down there, if I am not mistaken.

Q. What hotel was it?

A. I was at the Ambassador.

Q. And did he come over to see you about anything special?

A. No, he didn't come over to see me about nothing special.

Q. Did you talk to him?

A. Yes.

Q. What did you talk about?

A. Asked him how he was, asked him how everything was going, something like that. There wasn't much to talk about. I didn't have anything in common. I couldn't get the men back to work at that particular time.

Q. And that is all you talked about?

A. That's right.

Q. Didn't he bring to your attention at that time the letter McDonald had sent out to the contractors?

A. No. That come through the mail to me. But he had a copy of it.

Q. Who sent it to you?

A. I don't know. No return address. Just in an envelope addressed to me.

(2045) Q. When did you get it?

A. About the day after you wrote it.

Q. Do you know what day I wrote it?

A. Yes, you wrote that letter about ——

Q. I wrote it?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. Yes, that is what Mr. McDonald says.

Q. Who signed it?

A. McDonald signed it, but your wrote it, he says. Oh, I would say a day or so. Whatever it takes the mail to go from Philadelphia to Atlantic City. I don't know how long. It might take a day, it might take two days after you wrote it.

Q. McDonald told you I wrote it?

A. Yes.

Q. Tell me about that. How did he tell you I came to write it?

A. How did you come to write it? He said that he got—Roy Underwood come to him and asked him about, something about drawing up a letter, and he said he drawed up a paragraph to see if he could adjust the differences with the contractors. He took the—Roy, you have to ask him the details now on this. Roy asked him—I should call him Mr. Underwood, I know. He took the letter off of him and then took it over to you and you revised it and sent it back to him and said, "Here is the kind of letter you ought to send (2046) out." And he signed it and sent it out. Now, that is the substance.

Q. When did he tell you that story?

A. When did he tell you that story?

Q. Yes.

A. He told me that story in, I would say at the A. F. of L. convention in New York in September.

Q. That was the time Roy was being brought up on charges?

A. No, after that.

Q. You mean after Roy was suspended?

A. Yes, after the hearing down there, yes.

Q. How come he didn't tell you before?

A. Well, I didn't see him, to tell you the truth about the matter.

Q. Well, you saw him at the convention, didn't you?

A. Yes, but he didn't tell me that until—there was so

many people around me, he didn't tell me until after the thing was over.

Q. You saw him a good many times, didn't you?

A. No. I saw him around the lobby, but you couldn't talk to him. I wasn't even interested in talking to him.

Q. And you say you got it the day after it was postmarked, or dated?

MR. WOLFE: No, he didn't say that. He said (2047) several times he got it whatever the mail takes to get to Atlantic City.

BY MR. FREEDMAN:

Q. When did you get it with respect to the date it was dated?

A. I should say, I said a couple of days—I am taking the supposition—you asked me when you wrote it, I don't know. I said I suppose a couple of days after you wrote it.

Q. And Halloran didn't talk to you about that letter at all in Atlantic City?

A. I don't think he ever mentioned it to me. But my attorney talked to me about it.

Q. Which attorney?

A. Right here.

Q. Mr. Thomas?

A. Yes.

Q. When did he talk to you about it?

A. About the time we got the letter.

Q. In Atlantic City?

A. Yes.

Q. What upset you about the letter?

A. What upset me about the letter?

Q. Yes.

A. After reading the court case about the time I got the (2048) letter, I knew the letter was a part and parcel of the case, and I knew that was a pre-arranged plan that worked right into the case.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. When you got that letter you had not issued your order terminating the strike, had you?

A. Oh, yes. Yes, yes, I terminated the strike two or three days before that, I think. I know I did. That was August 11. I got the letter between August 11 and the time you filed the suit. I got the letter in Atlantic City.

Q. Yes.

A. And the letter of August 11, I wasn't in Atlantic City. I was in Washington, if my memory serves me right.

Q. When did you issue your order terminating the strike?

A. On August 11, the date of it, and I had it delivered in person by Mr. Wharton.

Q. Where did you issue it from, Atlantic City?

A. No, I think I issued it from—of course, it might have been Atlantic City, but I think I issued it from Washington. I know that I handed him the letter in Philadelphia and told him to take ——

Q. You mean Wharton?

A. Wharton. I was in Philadelphia I think, because when I sent for him to come down on the train, and I met him, and told him to deliver it over to the office right then. I (2049) didn't want any mistake about it. Looking over this record here—is it all right to go ahead?

Q. Do you want to answer?

A. I want to correct a couple of statements, is all.

MR. WOLFE: Well, if it is germane to the answers.

BY MR. FREEDMAN:

Q. If you feel you want to qualify anything you have said, it is perfectly all right with me. Let the record show that Mr. Maloney has been examining the records which have been given to him by Mr. Thomas, and if you want to make any qualifications, you go right ahead.

A. The only thing is that it was on August 7 that McDonald's letter was written, and it was on August 11 when I put the—and put the order in. And it was September

18, the day they tried Mr. Underwood here, the Executive Board tried him. And when I said the fifteenth when he gave me that information, it was sometime after the trial, I don't know what day it was.

Q. Now, you saw Halloran in your hotel in Atlantic City after McDonald sent his letter out, didn't you?

A. Yes, I did. I must have.

Q. And you say you did not talk about that letter at all?

A. No, outside the fact—I probably might have said to him, "I see McDonald sent a letter out." And he said, "Yes, (2050) I saw it." And he said, "Want a copy?"

I says, "I have got one." That is about the whole thing.

Q. And how much later than that did you issue your order terminating the strike?

A. Well, I am under the impression, Mr. Freedman, your letter was dated the seventh.

Q. Don't call it my letter, Mr. Maloney. Call it Mr. McDonald's letter. He signed it, and you know that.

A. Yes, I know he signed it. Then all right, we will call it McDonald's letter. I like to get the record straight.

Q. I would, too. I don't know who said it, but it is absolutely false, and you know it is false.

A. I don't know it is false. I am telling you the information I got from McDonald.

Q. You know McDonald signed the letter.

A. Yes. I don't want to get in an argument with you. I am trying to tell you what he told me. I told you that before.

Q. Yes, I listened to your explanation. When you call it the letter, you call it McDonald's letter, because he sent it. When I sign a letter, you can characterize it as mine.

(2051) THE WITNESS: I am telling you what the fellow told me. I never saw you dictate it.

BY MR. FREEDMAN:

Q. You have said it five or six times. All right. Let us just stick to the facts here and answer the questions. Was

it two or three days after McDonald's letter that you issued your order of supervision? Is that about what I gather from your prior testimony?

A. Well, your guess of that is about the same as ——

Q. Would you say that is pretty accurate?

A. Read that question again. I am thinking of something else.

(The question was repeated by the reporter.)

BY MR. FREEDMAN:

Q. I meant order terminating the strike. I did not mean supervision.

A. Well, I should judge about that time.

Q. Now, did Mr. Halloran see you on any other occasions than the ones that you have mentioned here?

A. Yes, I met him last April, I believe.

Q. And where was it?

A. In Washington.

Q. Sir?

A. Washington.

Q. He came down to see you?

(2052) A. I don't think, he didn't come down to see me, no. He happened to be in Washington and come over to the office.

Q. What was the occasion for that visit?

A. He came in to see me to say hello, I guess, more than anything else. I know he didn't want me. He didn't ask for me, anyway. And if you know Halloran, he will always ask for something if he wants it. And he just said hello. I guess that is about all.

Q. Did you see him between that occasion and the last one you mentioned?

A. I don't think I did.

Q. Did you see him in New York?

A. No, he wasn't in New York, to my knowledge.

Q. Wasn't he in New York on the occasion that Roy ——

A. I never talked to him, if he was.

Q. Didn't you know he was there?

A. No, sir. He might have been in New York, but he didn't talk to me. That is for sure.

Q. You know he was in the hotel where you were holding your meeting?

A. That may be true, but he didn't talk to me.

Q. Didn't Hunter Wharton tell you that he was there?

A. No, sir.

Q. And he didn't talk to you at all?

(2053) A. No, sir.

Q. And you don't know of any other occasions when Halloran got together with you?

A. I can't remember any at all.

Q. Were there any other occasions when Halloran communicated with you by the telephone?

A. This is just trying to track a memory thing on this. I don't know whether I talked to him over this last raise with the contractors or not over the phone.

Q. When was that?

A. I know that Wharton talked to him, and Wharton probably told me some of the things he said, and I was just wondering whether I talked to him or not.

Q. When was that?

A. Oh, that was when they were consummating the agreement, this last twenty-cent raise.

Q. That was very recently?

A. Well, when did they get the raise? They got the raise in June, wasn't it?

Q. How long before the raise did you talk to him?

A. Oh, sometime—I don't know whether I talked to him or not.

Q. Well, other than that, was there any occasion when you talked to him on the telephone?

(2054) A. No, no, no.

Q. He did not call you during the time that the strike

was on and before you issued your order of supervision other than those occasions that you mentioned?

A. Call me on the phone? Let me see now. In fact, if you are talking about this situation—after he left Chicago he did—I believe I did talk to him. I don't know whether he called me or I called him—and asked him what was the matter, why didn't they get together. And I think at that time he told me that Roy walked out on him or wouldn't talk to him, or the Committee was there and they couldn't do anything with him at all, couldn't settle anything. Now, whether he called him or whether I called him to confirm that, or whether he called me, I don't know.

Q. Now, you sent a telegram stating your views to be put up to the members, didn't you?

A. Yes.

Q. And there was a membership meeting held pursuant to your request, wasn't there?

A. That's right.

Q. That was immediately prior to the time you issued your order to return the men to work?

A. What do you mean?

Q. Well, within a short time. Approximately a week.

(2055) A. Well ——

Q. Four or five days.

A. You might be right, y

Q. Now, you had Hunter Wharton attend that meeting, didn't you?

A. That's right.

Q. And your telegram and your full recommendations were transmitted to the membership, isn't that correct?

A. Well, I think that is the report I got, yes.

Q. And did Wharton say that he was treated in any but a courteous and any other way?

A. Wharton never made any complaint at all.

Q. And he was given every opportunity to speak?

A. I told him not to speak. I didn't send him down there for that purpose of making a speech. I sent him down

there because, as I told you before, there was so many different reports that I have of the meeting, this was going on, and this, I sent him down there for the express purpose of not making a talk. And he told me he told that to Mr. Underwood, but Mr. Underwood insisted on him talking anyway.

Q. To state your views to the membership.

A. Yes, but I didn't give him any orders. I told him to sit down and observe what was going on and let me know what was happening at the meeting.

(2056) Q. But at any rate he was given an opportunity to state to the membership what your views were?

A. He didn't have any authority, and I didn't give it to him. Underwood forced that to him.

Q. But he did it?

A. I understand he talked.

Q. You also know McDonald stated your views to the membership and urged them to accept them, isn't that correct?

A. No, that is not correct. My recollection, it is not correct. My information is that McDonald went off into a little tangent talking about—I mean, on different subjects, I don't know what it was. He told me at the time. And talked about several things, and then finally wound up and did ask them to accept it, I believe.

Q. But he did ask the membership to accept your recommendations?

A. I think that is the information I got. I couldn't swear to that, because I got it secondhand.

Q. But from the information you had, that was the fact?

A. That is the way it looked, yes.

Q. And yet the membership voted not to accept your demands?

A. I don't know what they done.

Q. Didn't Wharton report to you?

A. No.

(2057) Q. He didn't report to you ——

A. He didn't tell me what they done, no.

Q. He was there.

A. Well, he didn't report. If he was there, he didn't report it. McDonald didn't, either.

Q. Didn't you know what the membership did?

A. I had an idea that they didn't accept the telegram, because they didn't go back to work. I didn't have to be told anything.

Q. Well, didn't you feel that they had a right to reject your request?

A. Sure they did. Why don't you tell them what the telegram was?

Q. Why don't I tell who?

A. It was a question of going to arbitration for these four little points they had. It wasn't a question of go back to work and settle it by arbitration.

Q. You concede the membership had a right to do what they did?

A. Yes, they done it, yes. I still think I had the right to do what I had to do.

Q. Did the attorney for any of the contractors associations get in touch with you at any time during that period?

A. Didn't talk to me.

(2058) Q. Did he talk to anybody in your office that you know of?

A. No.

Q. Or heard about?

A. Nobody said anything to me, if they did. You are not trying to leave the impression here that I was with the contractors in this dispute, are you?

Q. Mr. Maloney, I am here to ask you questions to find out what the facts are.

A. That is all right, I am just trying to find out myself.

Q. And when it comes time to argue, you can be assured that your counsel will take very good care of you.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. That is all right. See, I made a mistake, I wasn't an attorney.

Q. What did you say, Mr. Maloney?

A. I see where I made a mistake. It is off the record.

Q. Everything is on the record.

A. All right. I said I seen where I made a mistake. I wasn't an attorney.

Q. No. You are doing pretty good. Did you talk to McGrath at any time about this matter over the telephone?

A. No.

Q. Or through any representative?

A. No.

Q. Did any representative of your office talk to McGrath?

(2059) A. No.

Q. Or Halloran?

A. Not that I know of.

Q. Or to Halloran?

A. No.

Q. Or to any other representative of the associations?

A. No, no.

Q. Or to any representative of the Department of Labor?

A. No. We didn't talk about this case to anybody. Of course, it might have been a subject come up in a conversation, but I mean, you mean did we do and solicit information or give them information or something like that.

Q. I mean discuss the case.

A. We didn't discuss the case with nobody. I am ashamed of the case myself, to think a Local Union would take that attitude.

Q. I might say that the Local Union is ashamed of what you did to them, too.

* * * * * * * * *

VOL.

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IN THE

United States Court of Appeals

FOR THE THIRD CIRCUIT.

Nos. 12267, 12268, 12269, 12270 and 12289.

ROY J. UNDERWOOD,
Appellant in Nos. 12267, 12269,

v.

WILLIAM E. MALONEY, Individually and as representative of The International Union of Operating Engineers.

HOMER DAWSON, GERARD LEONE, JAMES RUSSELL, ROBERT WALSH, COLOMBO ACCHIONE, EDMOND FARMER, MICHAEL CONCORDIA, NORMAN GALE, STANLEY KOSIOBEK, GERALD GILROY, JOSEPH MARTIN and CLARENCE SWEENEY, in Their Own Behalf and on Behalf of All Members of Local 542 and Its Branches 542-A, 542-B and 542-C of The International Union of Operating Engineers,
Appellants in Nos. 12268, 12270,

v.

WILLIAM E. MALONEY and HUNTER P. WHARTON, Individually and as Representatives of and on Behalf of The International Union of Operating Engineers,
Appellees in Nos. 12268, 12270,
Appellants in No. 12289.

APPEALS FROM THE ORDERS OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

APPENDIX FOR APPELLEES IN NOS. 12267 TO 12270 INCLUSIVE AND APPELLANTS IN NO. 12289.

VOL. II (Pages 363b to 706b, inclusive)

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BY MR. FREEDMAN:

Q. You had known McGrath prior to the time he came into your office with Halloran, didn't you?

A. I had met him before, yes.

Q. You didn't talk to McGrath at all before he came into (2060) the office?

A. No.

Q. Why did he need an introduction from Meany to come in?

A. I don't think he felt he knew me well enough.

Q. But you said you had met him before?

A. Yes.

Q. Wouldn't you have spoken to him if he had come in alone?

A. Yes, I think I would.

Q. Had you ever had any business dealings with McGrath before this time?

A. Not a bit. Outside of—now, just say this: That he was United States senator when we had the labor league for political education, and he went over and made a talk one day at one luncheon, and we were trying to line up the senators that passed that bill to revamp the Taft-Hartley Law. We lost it by one vote. I guess you know all about that. I think that is where I first met him.

Q. When was that?

A. Oh, sometime right after Truman took office there in 1948, I think it was. He was senator from Rhode Island at that time.

Q. And had you met him after that time?

A. I never met him. I saw him at a wedding, but I never met him.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. I mean, did you have occasion to speak to them thereafter?

(2061) A. No, I don't think I ever talked to him.

Q. You are sure that nobody from the Department of Labor called you or communicated with you in any respect about this case, or your office?

A. I am positive of it.

Q. Did you regard this strike as a serious situation?

A. That I did.

Q. Did you ever take it up with your Executive Board?

A. I don't think they had an Executive Board meeting to take it up at that time.

Q. You had the power to call one, didn't you?

A. Yes, but I didn't.

Q. Do you ever consult the Executive Board before taking a local over?

A. Sometimes I do and sometimes I don't. Sometimes I put it up to them and let them make the decision.

Q. You knew that what you were going to do here was pretty important and that would have a lot of after effects?

A. I was positive of that.

Q. Didn't you consider under those circumstances the advice and counsel of your Executive Board might be helpful?

A. That's right, but I didn't consult them.

Q. Why?

A. Because I didn't think it was necessary. I had that (2062) power myself.

Q. The strike was going on for three months, wasn't it?

A. Approximately.

Q. Over three months.

A. Over three months, I guess, yes.

Q. Did your Executive Board meet at any time during that period?

A. I believe they did meet in about the last of May.

Q. Last of May?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. About in that period there. I don't know. The record will show that. Do you want me to look up the record for you?

Q. If you want.

A. No. If you want it. That is not me.

Q. Yes, I would like you to look it up.

A. O. K., O. K. From the 20th to 22nd of May.

Q. Did you discuss at that meeting anything about the strike?

A. No, I didn't. Outside of talking to—I discussed it with the members of the Building Trades Council that were in Boston at that time.

Q. I mean your own Executive Board.

A. No, I didn't talk to them about it.

Q. You never made any report to them at all?

(2063) A. No, not on that. If I thought it was going to take the turn it did, I surely would.

Q. Mr. Maloney, what is your salary from the Union?

A. Thirty thousand dollars a year.

Q. Thirty thousand a year. Are there any other compensations that you get from the Union?

A. Get my expenses.

Q. What are they?

A. Whatever they amount to.

Q. How much do they amount to?

A. Different amounts.

Q. How much were they last year?

A. How much were they last year?

Q. Yes.

A. I can't tell you that, but I can tell you what they were the year before.

Q. Why can't you tell me about last year? 1952, that is.

A. I haven't got the record of it.

Q. It is filed, isn't it?

A. I can't remember the amount. I would have to go and look it up.

Q. Don't you even remember approximately?

A. No. How can I do that? You don't know what the railroad fare is. Railroad fare from here to Chicago and a hotel (2064) around this town will run fifty, sixty dollars a day.

Q. What was it for 1951?

A. 1951 was $13,300, I believe.

Q. Was it more or less in 1952?

A. It might have been more or less in 1952, it all depends on what the travel rates are. I would say that 1952 it probably might have been a little higher. Hotel rates are up and railroad fares are up.

Q. And you have no idea at all how much your expenses were in 1952?

A. I am telling you about what they were, approximately, for 1951. They might be the same for 1952 and they might have been a little bit more and they might have been a little bit less.

Q. Is there any other compensation you get from the Union?

A. What do you mean, what other compensation?

Q. Any other monies.

A. Yes. I get other money from the Union.

Q. What are those monies?

A. I get money for being a member of the General Executive Board.

Q. What do you get for that?

A. It runs about five thousand dollars.

Q. A year?

(2065) A. Yes.

Q. Anything else? Do any expenses go along with that?

A. No expenses with that, not for the president.

Q. Is there any other compensation you get from the Union?

A. Not that I know right now.

Q. You can't recall of any other compensations you get?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. No.

Q. Now, do you make any other income other than that which you receive from the Union?

A. Yes.

Q. From what source?

A. From different sources. I have different income property that I get an income from.

Q. What was your reported income in 1952?

A. I think it is a little bit out of line.

* * * * * * * * *

(2067) Q. What other income did you have from your salary and income from the Union last year?

A. On the advice of counsel, I won't answer.

Q. From whom did you obtain any monies other than from the Union during the years 1951 and 1952?

A. Nobody, only my income.

Q. What income?

A. My other income.

Q. From what sources?

A. I told you, it was from other sources.

Q. What other sources?

A. Investments, and one thing and another.

(2068) Q. What investments do you have from which you get income?

A. I won't answer it, on advice of counsel.

Q. Where are the investments located?

A. Chicago.

Q. Are they stocks and bonds?

A. Some of them.

Q. Property?

A. Some.

Q. Do you hold those properties alone?

A. Absolutely.

Q. What properties are they?

THE COURT: That was objected to.

A. I will take the attorney's advice.
Q. What about stocks? What stocks do you own?
A. I will take the attorney's advice.
Q. You won't state what stocks you own?
A. I said I would take the attorney's advice. He told me it is not necessary to answer it, and I am taking his advice.
Q. I ask that you produce your income tax returns—where are they located now, Mr. Maloney?
A. That is my private business.

(2069) MR. WOLFE: Just a moment, please.
As Your Honor may recall, a petition was filed on that subject, and Your Honor dealt with it. So that I object to any questions on that.

THE COURT: Yes. I examined the income tax return of Mr. Maloney, with supporting documents, and the record of an examination by the Internal Revenue Service. There was nothing in there that would indicate other than normal ordinary income, and I think I so stated in an order. Is that not correct?

MR. WOLFE: That is correct. Your Honor entered an order.

MR. FREEDMAN. Your Honor did not enter any order, I don't believe. I may be wrong, but I have no recollection that Your Honor entered any order.

MR. WOLFE: It depends on how you interpret the word "order." I am sure my recollection ——

THE COURT: Well, gentlemen, I have file paper No. 67

in front of me, "Order Sur Request for Production of Documents," filed January 12, 1956;

"And now, to wit, this 12th day of January, 1956, the defendant William E. Maloney, pursuant to an order contained in the record of the pretrial conference held on December 13, 1955, having produced, (2070) through his attorney and accountant, for the inspection of the court his copy of United States Individual Income Tax Return for himself and his wife for the calendar year 1952, together with photostatic copy of the Audit Report of the Treasury Department thereon, and there appearing to the court no information therein in connection with receipt of income, expenditures made, or acquisition of assets, in the year 1952, which might lead to the discovery of any evidence relevant to the issues involved in the instant actions, it is Ordered, Adjudged and Decreed that plaintiffs' motion for the production of defendant William E. Maloney's income tax return for the year 1952 be and it is hereby denied.

"By the Court, Thomas J. Clary, J."

* * * * * * * * *

(2071) Q. Who manages your own private business, Mr. Maloney?

A. A fellow named Maloney.

Q. You mean you take care of all of your private business?

A. Yes.

Q. How many properties have you got?

THE COURT: That is objected to and the objection is sustained.

Q. Do you have a pension coming to you from the Union?

A. Yes.

Q. What is the pension?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

(2072) A. I don't know what it will be. I have never taken it.

Q. You mean you are not taking it yet?

A. No.

Q. But you will be eligible for it, won't you?

A. I have been eligible for it for ten years.

Q. You mean if you retire?

A. Yes.

Q. And you don't know how much the pension is?

A. No.

Q. Is that a pension provided by the International Union?

A. That's right, for all their employees.

Q. Was there any other income that you received during the years 1951 and 1952 other than what you received from the Union and from properties and stocks and bonds?

A. No.

Q. None at all?

A. Not a cent.

* * * * * * * * *

(2073) Q. Is there anyone who assists you in the management of your own personal affairs?

A. No. Unless I need an attorney for some case or something, I hire one.

Q. And you do not use anyone to assist you in connection with your personal finances?

A. No, no, no.

Q. Do you have any business relationship with any of the contractors, with any contractor?

A. Not a bit.

Q. How about any member of your family?

A. No. I only got one wife. She is in the income tax with me.

Q. Does she file a separate income tax return?

A. No, no.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Does she have any business relationship with any contractor?

A. No, none whatever.

Q. Have you ever been in any business transaction with any (2074) contractor?

A. Never.

Q. Directly or indirectly?

A. No. Well, now, wait a minute, wait a minute. No, that's right. I wasn't in with any contractors, no.

Q. Sir?

A. No, I wasn't in any. I was thinking of something else.

Q. What were you thinking of?

A. I answered your question. I wasn't in any business with contractors.

Q. Well, let me put it this way: With employers.

A. Well, you might be in business with a fellow and be an employer, I wouldn't know.

Q. Do you have any business relationships with any employers?

A. No. I had a little business relationship with a couple of my own representatives.

Q. Which representatives?

A. Representatives of our International Union.

Q. Which ones?

A. Not any connected around this part of the country.

Q. What kind of a business relationship was it?

A. We got into an oil deal and lost our money.

Q. Who were the representatives?,

(2075) A. Weren't this part of this country. One out West.

Q. Who are they?

A. I don't know as it is necessary to put that in the record.

MR. WOLFE: It isn't necessary unless you want to do it.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

THE WITNESS: No.

BY MR. FREEDMAN:

Q. When was it?
A. Oh, a couple of years ago, I think. Three years ago.
Q. 1951?
A. 1950, I think. Might have been 1951, I don't know.
Q. Who were these fellows?
A. They were friends of mine.
Q. You say they were representatives in the Union?
A. Yes, they represented the Local Unions, yes.
Q. Who were they?
A. I refuse to answer.
Q. What part of the country are they from?
A. They are from the western part of the United States.
Q. What state?
A. Well, I still refuse to answer that question. I don't think it is—whether this local is put under supervision or not, I don't think that has got any right in the proceed-
(2076) ings.
Q. Have you had any business dealings or financial transactions with anyone other than the Union?
A. Union?
Q. Whom you represent.
A. Have I what?
Q. Anyone other than the Union that you represent, or in connection with the stocks and bonds and the properties that you hold?
A. No, I am not in any business with anybody else. I told you that. I have no business with them.
Q. You never had any deals with anybody else?
A. No.
Q. Other than the one you just mentioned?
A. That's right.
Q. You said before that the first time you saw Halloran

was about two weeks before you invoked supervision, is that correct?

A. That's right, approximately. I wouldn't say it was two weeks to the day, or ten days, or three weeks.

Q. Then you heard his story, and it was after that that you for the first time got in touch with Carter and brought him into these proceedings?

A. Yes, I got a hold of Carter and sent him down here for (2077) to see if he couldn't adjust the matter and get them together.

Q. But at that time you didn't call in Underwood to meet with you and Halloran, did you?

A. Not that day, no.

Q. You heard Halloran's story, but you didn't call in Underwood to have Halloran confront him with his version?

A. I had heard Underwood's story before, as I told you, and when Halloran told me the story it was just opposite from what Underwood told me, so then I called Carter to get the two of them together to get the story straight.

Q. Why didn't you call in Underwood and have a meeting?

A. Because I wanted somebody down—I had something else to do, and I sent Carter in here for to try to get it adjusted. He was a next door neighbor, and I thought he would work pretty good in getting it settled.

Q. What was the matter with McDonald? McDonald was in the area. Why didn't you call him?

A. I didn't want him.

Q. Why not?

A. Because I wasn't satisfied with him.

Q. Why?

A. Haven't I got a reason of my own without telling you?

Q. I have asked the reason.

(2078) A. I have my own opinion. I thought maybe Carter could do better.

Q. McDonald was higher in rank than Carter.

A. But I thought Carter would make a better man to get it settled.

Q. Why?

A. Because I had more confidence in him. I thought he would be the proper man to settle the proposition.

Q. Why didn't you invite in McDonald? He was an International representative, wasn't he?

A. I thought Carter was a better man.

Q. But McDonald was assigned by ——

A. But I thought Carter was a better man to settle it.

Q. Wasn't that a reflection on McDonald?

A. You can make any interpretation you want to. I thought Carter was the best man to try to settle it.

Q. What objection did you have to having the Executive Board of the local present at the meeting with Halloran?

A. I didn't have any objection at all, but I thought if the two of them could get together—it was a personal fight, the way I took it, and I thought maybe Carter could get them together to get it adjusted, which we so often do in the labor movement and every place else.

Q. You know that Underwood couldn't act without his (2079) Executive Board.

A. Well, I knew that, but if I could settle the difference between him and Underwood so they would agree to go along, I didn't think there would be any trouble about the Executive Board.

Q. Well, in other words, you wanted to have it done without the Executive Board present?

A. No, I wanted them to come to some understanding where they could get it down, like everything else is settled in the same line.

Q. You knew that the Executive Board were the designated representatives of the local and they had just as much to say about it as Underwood. What objection did you or Carter have ——

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. Carter—I gave Carter orders to try to get Underwood and Halloran together alone to see if they couldn't adjust their difference between themselves. Then the two Boards could meet and probably could get together. Very simple. You know that is the regular procedure all over the country. Even procedure with the Secertary of State in handling Mr. Syngman Rhee.

Q. Your ideas and those of other people vary very substantially, Mr. Maloney.

A. That is all right. Mine seem to be very successful. (2080) I run the Union.

Q. It depends on your point of view.

A. Well, the record shows for itself.

Q. That is what I am talking about.

A. Yes, that's right.

Q. Did you make any record of your instructions to Carter as to what you told him to do?

A. No.

Q. Did you call him on the telephone in Halloran's presence?

A. No.

Q. If he attempted to write a contract for the local, would you say that he was violating your instructions?

A. Yes, I would say he was, if he attempted to do that.

Q. Didn't you know that he tried to do it?

A. No, I don't know he tried to do it. I never seen any he tried to write up. I never seen any copy that he wrote up, either. Nobody else did, I think.

Q. Didn't you know that he went into session with the employers before he even talked to Underwood?

A. No, I don't know that, either.

Q. Didn't you know that even after he was here a while he entered into some sort of an arrangement with the employers?

(2081) A. I don't know that, either.

Q. It was told to you, wasn't it?

A. No, it wasn't.

Q. You mean you didn't know it to this day?

A. No.

Q. And this is the first time you have heard it?

A. That's right. Unless you call calling up Halloran for to meet Underwood and meet him in the hotel, that is what you mean?

Q. No, that is not what I mean.

A. Well, that is all right, then. The answer sticks.

Q. I am talking about terms and conditions and so on.

A. No, I don't think it ever was discussed. I think that is just some ——

Q. And you never saw anything like that at all?

A. No, I did not. I don't think you ever did or anybody else sitting at this table ever did, either.

* * * * * * * * *

(2082) Q. You make some awfully strong statements, Mr. Maloney.

A. Well, that is the truth. That is my opinion.

Q. I think we will be able to show where the truth lies.

A. All right.

Q. In no uncertain terms.

A. All right.

Q. Now, did you see Carter at any time after that conference with him over the telephone other than the occasion in Chicago that you told us about?

A. No, I didn't see him.

Q. Did he report to you from time to time?

A. Yes, he talked to me over the phone, talked to me over the phone.

Q. Would you have discharged him had you known that he was trying to write a contract or draft the terms of a contract?

(2083) A. I believe that I would have changed him to

somebody else—put somebody else in there. It depends on the circumstances, of course, entirely.

Q. Do you remember McDonald's letter?

A. What letter?

Q. The letter of August 7, I think it was. August 7 to the contractors.

A. I read it. I don't remember it right at the time, but I read it.

Q. What was there about that letter that you especially objected to?

A. I objected to him entering into an argument at that late date. As I say, I knew somebody wrote that letter for McDonald, and that wasn't McDonald's letter, and I wanted to know what idea he had sending that out under his signature, somebody else's letter.

Q. Is that why you objected to it, then?

A. That is what I objected to it then.

Q. Do you remember what the letter was trying to do?

A. Yes, I know what the letter was trying to do.

Q. What was it trying to do?

A. I didn't know at that particular time, but ——

Q. What was the purpose of the letter?

A. So that it would intervene in this lawsuit, so that it (2084) would be a part of the suit in Grim's court.

Q. Let us take the language of the letter. Do you remember what it said?

A. No, I don't.

Q. Don't you remember it was an attempt to get together with the contractors?

A. Something like that. The letter talks for itself.

Q. Did you have any objection to that?

A. No, I had been trying to get them together.

Q. Why did you stop McDonald?

A. Because I figured he wasn't any more good in this case for trying to settle it, and that is why I wanted to stop him. I made up my mind that I might as well kick him out of it altogether.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. When did you tell him that?

A. I knew I had no hopes of getting the matter settled as long as McDonald was in the picture at that particular moment.

Q. When did you decide that?

A. I decided that a week or so before that, maybe two weeks before that. He wasn't any help to the International office in getting the thing adjusted.

Q. Did you know that tentative appointments were being made to meet with contractors as the result of that letter?

A. How would I know it?

(2085) Q. I am asking you: Did you know it?

A. Nobody told me, no.

Q. Didn't Halloran tell you?

A. No, he didn't.

Q. And you told McDonald not to take any further action?

A. That's right. I told him to get out of it altogether.

Q. When did you tell him that?

A. Shortly after I got his letter.

BY MR. FREEDMAN:

Q. Mr. Maloney, how many other locals do you have under supervision?

A. That would have to be looked up in the office.

Q. Well, don't you have any idea? You are the one who is in charge of it, aren't you?

A. That's right, but I don't keep track of them. They are in, they are released, and they are in and they are released, and how could I keep track of them?

Q. Well, let us start on the West Coast. What have you got on the West Coast under supervision?

A. I think right now I got one.

Q. Which one is that?

(2086) A. Portland, Oregon, stationary local. Maybe it is released now, I don't know. I know it is right on the verge.

Q. Don't you have to release it?

A. By that, I just send it through the regular form and give them notification and let them have election and they are released.

Q. You should know whether they are released or not.

A. I don't know. I haven't been in the office in a couple of weeks or ten days or so ——

Q. No one but you can sign the order, can they?

A. Sure they can. To release it?

Q. Yes.

A. Sure. I give them orders to release it and they send it out.

Q. Did you give them orders to release the Portland local?

A. Yes.

Q. You have already given orders?

A. Yes.

Q. To whom?

A. Gave the orders to the representative on the West Coast, go up and release the Local Union.

Q. Who is the representative on the West Coast?

A. Carmen.

(2087) Q. What other locals on the West Coast do you have under supervision?

A. I don't think there is any now. We released a couple in the last month or so.

Q. Is the Lower California local operating under any conditions at all?

A. Not a bit. They are absolutely local autonomy. They had an election. They just had a second election.

Q. When were they released?

A. Oh, I would say two years ago.

Q. And you have had nothing whatever to do with them since that time?

A. Not a thing.

Q. What other locals do you have under supervision now?

A. Well, I got this one in Philadelphia, as you well know, and there is one in—one I am releasing in Syracuse, New York.

Q. Yes.

A. One in Evansville, Indiana. You know the number of that one, I guess. Mr. Lovett's organization. One in Chicago, stationary local. I wouldn't say they were under supervision. Just take it off. They are not under supervision. We just take care of their finances. They elect their members.

(2088) Q. You take care of their finances?

A. We don't take care of their finances. We just supervise the finances, that they don't spend any unusual money.

Q. How could you do that without taking over supervision?

A. We insist on a report coming to us for what they do with their money.

Q. That is some sort of limited supervision?

A. I wouldn't say it is limited supervision. It is just a question of seeing what they can do.

Q. What do you do, take care of their money?

A. Not take care of their money. See what they do with their money. See they don't foolishly spend it or throw it away or give it to somebody or something like that. They elect all their own officers and transact their own business.

Q. What other locals?

A. The one in Chattanooga, Tennessee.

Q. Where else?

A. I don't know whether—there is one in Rochester, New York, or not. I am not sure whether that is under supervision or not.

Q. Yes. What else?

A. That is all I can remember of, if I don't get into looking at the record.

Q. You don't have any down in the southern part of the (2089) country?

A. No, not now.

Q. Southwestern part of the country?

A. No, not now.

Q. These are the only ones you remember?

A. Wait a minute. No. That's right. We haven't got any down there. I thought we had one in Mexico, but we have not. That is local autonomy.

Q. And these are the only ones ——

A. They are the only ones I can think of right now. There might be others.

Q. When you take a local under supervision, don't you keep them under your direct control?

A. Well, that is what the constitution says, but we generally appoint a supervisor and let the supervisor operate it and let him report to the General Office. He operates it for the best interests of the members, and if there is any kick from the members or anything like that, we immediately take it up with him to get it corrected.

Q. And don't you check on him?

A. We check on him by a daily report.

Q. I mean you?

A. I couldn't check on all the ones. They come through our office. I set that up so it is all checked. It is automatic. (2090) Certain people in the office check all the reports. I couldn't check all the reports.

Q. Don't you make a spot check now and then?

A. Every once in a while I do. I ask for some particular local to see how they are getting along, look at their finances, and look at their record and see what they are doing, how many men is working, what kind of work, whether they are increasing their membership or standing still, or whether the local is not handling it properly and going broke or something like that.

Q. What about the Philadelphia situation prior to 1948? You were in for ten years; for eight years, at least before supervision was lifted.

A. Yes. What about it? What do you mean?

Q. What kind of a check did you make then?

A. At that particular time we set up a different checking system since that time.

Q. What kind of a checking system did you have then?

A. We didn't have too much of a checking system at that time. I inherited that, and the war come along, and, of course, we didn't have an opportunity to put it in. But right after that we put in a checking system. We have traveling auditors go all around the country. Oh, yes, there is a local under supervision at Kalispell, Montana.

(2091) Q. When is the last time you made a check of the supervision in the Philadelphia local?

A. Why, I look at the financial statements once in a while. You have seen them here yourself. See how they are getting along. I get a verbal report from the supervisor every once in a while, every week, how things are coming down here. And incidentally, three or four different telephone calls from different members around here every once in a while.

Q. Do you do it the same with all the other locals?

A. Pretty near.

Q. And you still can't remember too well the locals that you actually have under supervision, even though you get these calls from them every week?

A. That's right. You couldn't either, if you were in my position.

Q. I meant to ask you, Mr. Maloney: Did you accumulate these properties and these stocks and bonds that you talked about before, during the period that you have been president of the organization?

A. No, I accumulated before.

Q. How long before?

A. On advice of counsel I won't answer it.

Q. You had all of these properties that you have got today (2092) before you became president, and all the stocks and bonds?

A. I refuse to answer, Mr. Freedman.

Q. Mr. Maloney, weren't you aware of the fact that McGrath tried to make contact, or started to make contact with Mr. Underwood before you entered the picture?

A. If he did, I didn't know nothing about it.

Q. Didn't know anything about it?

A. Not a word.

Q. Were you returning a favor to Mr. McGrath in granting this audience and in talking to Halloran, Mr. Maloney?

A. Under no circumstances. He never done any favors for me, and I didn't have anything to return.

Q. Mr. Maloney, can you tell me why Carter would continually call you about Local 542 prior to the time you talked to Halloran?

A. Can I tell you why?

Q. Yes.

A. I can only tell you that I surmise, if this is what you want to know.

Q. Did he give you any reason for it?

A. No, he just said he had certain information, such and such was happening. I didn't ask him where he got the information, either.

Q. And it was all bad information, wasn't it?

(2093) A. Not all of it.

Q. Was it in the form of a report that he was making to you?

A. That's right, he called me up and let me know what was going on. I get reports from all over the United States sometimes from different locals.

Q. You mean from people not involved?

A. Yes, not involved.

Q. Reports on a particular local?

A. Yes.

Q. One agent will report on another local?

A. Will tell me what happens lots of times.

Q. Regularly?

A. I wouldn't say regularly. If something unusual happens, they tell you about it. What they think is the best interests for our International Union.

Q. Is there any other agent that you have got who reports on any other local than his own, any other representative?

A. Oh, once in a while I got a phone call about different ones.

Q. Can you give me the names of any?

A. No, I wouldn't give you the names if I could. I can't remember them, but if I did, I wouldn't tell you, Mr. Freedman, because it don't involve this case.

(2094) Q. Carter was connected with Joe Fay prior to the time that he went to jail, wasn't he?

A. You go a long way. Yes, I think he was an officer of the local.

Q. And he was pretty closely associated with Fay, wasn't he?

A. I wouldn't say that.

Q. What would you say?

A. I would say that he was an officer of the local. That is about as far as he went.

Q. Was it under Fay?

A. Fay was the business manager.

Q. What were his relations with Fay?

A. I don't think they were too good.

Q. What were your relations with Fay?

A. Not very good at all.

Q. Did you ever oppose him in the Union?

A. Yes, sure, I opposed him in the Union. The International Union and every place else. I didn't agree with Fay.

Q. Did you take any measures to oust him?

A. I did after he was convicted.

Q. But you know what was going on before he was convicted.

A. How would I know it?

Q. Carter was in his local.

(2095) A. Carter never told me. Get this straight, all the trouble Fay was in was before I was president. He didn't get convicted or anything after I was president. It was before I was president all the trouble that he was in happened.

Q. All of this business about Fay happened right in New Jersey, didn't it?

A. Well, according to—I think maybe the records show that, yes. I don't know know whether it was or not. You are asking me something I don't know.

Q. That was within the jurisdiction of Carter, wasn't it?

A. Carter belonged to the local, yes.

Q. And yet did Carter ever tell you anything about Fay?

A. I don't think he ever knew anything about him to tell me. He never told me anything about him.

Q. And that was happening in his own local?

A. He never said anything about Fay. I don't think they were too good of friends.

Q. What was Carter's position in the local under Fay?

A. Well, I think he was business representative and ——

Q. Who was he appointed by?

A. I think he was elected by the members.

Q. And didn't he go along with Fay at that time?

A. Now you are asking me something that I don't know (2096) nothing about.

Q. Are there any other representatives of the Operating Engineers now who are either under indictment or under investigation by the Government or any state authority?

A. Yes, I believe there is.

Q. Who?

A. A couple in St. Louis.

Q. And what are you doing about those?

A. I am doing like I do with everybody else: Until the court convicts them, I can't do anything about it. They say

they are innocent, and the court says they are guilty. Just because they are indicted don't make them guilty. If they are tried and convicted, then they go out.

Q. Have you made any independent investigation of your own?

A. Yes, a little bit.

Q. And are you taking any action in connection with that investigation?

A. Well, I am trying to find out—the reports I get is just opposite from what the grand jury says.

Q. Has one of your representatives resigned recently in one of the jurisdictions?

A. A representative resigned?

Q. Yes.

A. I surely can't remember one. Maybe one slipped over (2097) my head. Tell me who it is or where it is at, and I will tell you.

Q. But you don't know of any right now?

A. I can't tell you of any.

Q. And he hasn't been in to see you in the past month or so?

A. No, nobody has been in to see me about resigning. Representative of what?

Q. One of the Local Unions.

A. One of the Local Union representatives?

Q. Yes.

A. No. I would say if he resigned, he probably got beat, he got beat by the membership. I think if you look it up real close, you will find that out. I don't know who you are talking about.

Q. How about the Long Island situation?

A. What about it? That is under local autonomy.

Q. Wasn't the business representative there in some trouble?

A. Not that I know of. He is still business representative there yet.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. And he is not in any trouble at all?

A. Not that I know of. I don't think he is in any trouble. He is down there every day, from what I can understand. He (2098) just called me a week or so ago. I don't think he is in any trouble. If he has, he kept it to himself.

Q. Did one of your agents have to quit down in 181? That is in the Evansville, Indiana territory.

A. He resigned, yes.

Q. Why?

A. One of them resigned. Why did he resign?

Q. Yes.

A. I can't tell you his reason for resigning, but I got a complaint down there and I sent people in there to investigate it and he resigned.

Q. And don't you know what the investigation showed?

A. I haven't heard a report on the investigation. He resigned.

Q. You mean you stopped your investigation when he resigned?

A. It wasn't necessary after he resigned.

Q. You stopped your investigation as to this man when he resigned?

A. Yes, sure.

Q. And didn't your investigation disclose anything improper about that agent?

A. No, I don't think there was anything improper about him, only his feelings were hurt that they were investigating (2099) him.

Q. Wasn't there any misappropriation of funds?

A. No, sir.

Q. You say you stopped your investigation. How can you say that?

A. I stopped it, that's right. That wasn't the question at all. There wasn't no misappropriation of funds.

Q. What was it supposed to be?

A. It was on something else entirely.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. What was it?

A. A complaint came to me and I investigated it. I don't know whether it is true or not, so why should I tell you?

Q. What was the complaint?

A. It is only a complaint. The complaint was he was renting machinery to somebody else, to the contractors, and we found out it wasn't so.

Q. I thought you said you didn't know what the investigation showed.

A. That is as far as it went. But he got insulted and resigned. What is the use of continuing it on? For what purpose? There wasn't any money involved, because he don't handle money or didn't handle money, and he was there a good many years, too.

Q. Who handles the money for that local?

(2100) A. A fellow name of Kelly.

Q. And where is the money kept?

A. Part of it in Evansville and part of it in Chicago.

Q. Why should that money be kept in Chicago?

A. For the very simple reason why he can get interest on the money in Chicago and he can't get it in Evansville in the bank.

Q. Did you prepare all of the orders like the order terminating the strike yourself, or was it done with anybody's assistance?

A. It might have been attorney's assistance.

Q. I am asking you; was it or was it not?

A. Yes, I said I got some assistance off the attorney.

Q. He is the only one who assisted you in it?

A. That's right.

Q. Mr. Maloney, do you remember the occasion when the local petitioned for an increase of wages before the Construction Industry Stabilization Commission?

A. I don't remember. Sometime in 1951 or 1952. I don't remember.

Q. Yes. And do you remember that the International gave its approval to that application?

A. If the records show that that is right.

Q. I am asking you about your recollection.

(2101) A. No, I don't remember it. That come through one of my men. I told you I had a man handling that over there, and I would have to consult him.

Q. But you have no recollection of it yourself?

A. None myself, no.

Q. Do you have any recollection that after the International approved the application, it subsequently withdrew its approval?

A. I saw a telegram to some language like that on, but I forget what the answer was. I brought it up, and I would have to ask him again. It wasn't—that wasn't withdrawing it for what you think the purpose was. It was withdrawn for another reason, if I remember rightly. I will have to ask the question again off the fellow to get the answer.

Q. Don't you have any personal recollection of it?

A. No, I haven't.

Q. The point is, however, the approval was withdrawn.

A. For some particular reason, I think, with the approval of Underwood.

Q. Are you stating your own recollection?

A. I am trying to state my own—I am just saying I am thinking that it was withdrawn with the approval of Underwood, yes. I think that is the answer he gave me. I told you I would have to consult the fellow to see what the question was.

(2102) Q. Did Underwood ask you to withdraw it?

A. Not me, not me, the fellow that was handling the case, a fellow name of Hill.

Q. Why would you want to withdraw approval of an application?

A. I don't know. There might be something in there, some particular reason in there. There might have been a reason I don't know anything about. Not right now. We will find out.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. So far as your recollection is concerned, you know that it was withdrawn, but you can't say why?

A. That's right. I will find the answer the next time you ask me that question.

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Q. Mr. Maloney, how much time would you say you actually spend on the supervision of these locals that you take over? Say each month?

A. How much time I spend on them?

Q. Yes.

A. That would be a hard question to answer.

* * * * * * * * *

(2104) Q. You have been sworn, Mr. Maloney, so there is no need to repeat the oath at this time. Mr. Maloney, you said yesterday that a number of national contractors intervened with you or communicated with you about the strike. Can you tell us who they were?

A. Well, one of them, I told you yesterday, was the Koppers Company.

Q. Koppers?

A. Koppers Company, yes.

Q. Yes. Who from that company called you?

A. I would have to look up. I think they not only complained over the telephone, but I think they wrote a letter about it, too. My recollection of that. Some of them have.

Q. Do you recall any telephone conversation?

A. Only that there was—that they had a national agreement. Really, the question there was that they (2105) called my assistants, and my assistants brought it to my attention. Now, that is really where—the way it happened most of the time.

Q. Well, did you talk to any of these national contractors yourself?

A. I doubt whether I did or not.

Q. Don't you have any recollection?

A. No, I don't think I did. I probably talked to my assistants about it and they talked to them.

Q. Well, what information was given to you, or so far as your assistants are concerned, what did they tell you about the national contractors? I mean, give us the identity of them, first.

A. What?

Q. Identify the national contractors first.

A. Well, I am just trying to tell you that Koppers was one, and I believe Stone & Webster was another. I am guessing at that, I want you to know that. And there was another contractor down there, I can't think of his name, but the record—We can find out from the records who it is.

Q. What records?

A. Well, Mr. Hill would have, maybe his recollection would tell us who it is.

(2106) Q. Well, don't you have any records?

A. Well, unless it was a telephone call we wouldn't—unless there was a memorandum made of it.

Q. Weren't any letters sent in from these International contractors?

A. That I don't know. I am trying to tell you I had one yesterday from—What was the name of the company, we had one yesterday? Mr. Carter's name. That is in our file. That was Merritt, Chapman, Scott's man.

Q. Well, I demand production of all of the letters ——

A. I don't say that ——

Q. Just a minute.

A. All right, go ahead.

Q. I demand production of all of the letters of memoranda which were made by any of Mr. Maloney's assistants regarding these complaints which came in from these International contractors.

A. They have been ordered to give them to you if they have them.

* * * * * * *

(2107) Q. This is all you can tell us about the International contractors, Mr. Maloney?

A. Yes, that is the kind of a thing for me to try to remember all the contractors in the United States, and which particular ones were here at the time. That is an unusual thing. You could get that information from the Local fellows here. They know the International contractors. They could give you that information, if you wanted to ask them.

Q. How would you know which ones called you?

MR. FREEDMAN: May I make a correction here, sir? The question probably meant, "How would they know which ones called you?" I think that probably gives this more sense.

Do you agree, Mr. Wolfe?

MR. WOLFE: That would sound reasonable to me. I have no objection to changing it, if you wish.

(2108) A. They certainly know, because they evidently was called on the phone about it. And this one, particular one we had a discussion about it. He said he was on the committee, and because he was on the committee he wouldn't agree to let him out, because he was on the negotiating committee here.

Q. What are you talking about?

A. I am talking about International agreements, what you asked me about.

Q. What has that got to do with the Local?

A. That has got a whole lot to do with the Local. The men work on them agreements in the Local.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. My question to you, Mr. Maloney, is, what information do you have regarding these International contractors who called you, or who you said called you yesterday?

A. I am trying to tell you that as to one in particular down here, that the question, when they call us, why, I suppose the office would call them down here to see what the trouble is. And the complaint I got, if my memory is right, is that 542 told them that these people were on the negotiating committee, were taking an interest in the negotiating committee in the contract, and they wasn't going to release them under that supervision. I think it was Stone & Webster. I am not sure now, I am (2109) only thinking. How can I remember all the International contractors?

Q. I take it your office is run on a business-like basis. That's right, isn't it?

A. We try to run it that way, yes.

Q. Don't you make memoranda of all these telephone conversations?

A. Sometimes we do and sometimes we don't.

Q. Why don't you do it all the time?

A. Because that hasn't been the policy to do that all the time.

Q. Why?

A. Because we only get in a lawsuit every ten years.

Q. What has that got to do with it?

A. It has got a whole lot to do with it.

Q. Don't you think you ought to have it from your own records?

A. We don't need it for our own records. After you get a job settled, you don't worry about it.

Q. What makes you make a memorandum, and why don't you make a memorandum?

A. Maybe I make a memorandum. I don't think I ever make one myself. I make a memorandum for to bring it to my attention or somebody else's attention around, or

call (2110) the Local Representative in regard to a situation.

Q. Mr. Maloney, you already had the order of supervision made out when the conferences were going on in Judge Grim's chambers, didn't you?

A. That's right.

Q. You already had it made out all the time despite the fact you were sitting in there—your representatives were sitting in there trying to work out some settlement?

A. That's right.

Q. And it was at your instruction, was it not, that your counsel got up and forced the local to withdraw its demand for retroactive pay ——

A. Absolutely ——

Q. Let me finish. Will you repeat my question, please, as far as I went.

(The question was repeated by the reporter.)

BY MR. FREEDMAN:

Q. —under threat of having supervision invoked at that moment?

A. Absolutely not. I didn't give him any instruction of that kind whatsoever.

Q. You know that was done, don't you?

(2111) A. No, I don't.

Q. Didn't anybody tell you that was done?

A. No, they didn't. What they told me is what I told you yesterday, that you waived the jurisdiction of the back pay. That is the statement that I made yesterday, and I am making it today. That is the information that I got.

Q. Who gave you that information?

A. Well, it come from Mr. Rhoads' office.

Q. And said that I did it voluntarily?

A. I didn't say anything—I didn't use the word voluntarily.

Q. Did you tell ——

BY MR. FREEDMAN:

Q. Is there anything else you want to say?

A. I said that the information given to me out of Mr. Rhoads' office was that you waived the jurisdiction for the back pay.

Q. Now, what instructions did you give him about the back pay?

(2112) A. I didn't give him any. I told you that. Not any at all.

Q. You know he signed a stipulation, don't you?

A. I don't know that, either.

Q. You don't know that, either?

A. No, I don't.

Q. In your name.

A. No, I don't.

Q. Did you give him authority?

A. No, I didn't.

Q. Do you mean to tell me you did not authorize Mr. Rhoads to sign that stipulation in court?

A. That's right. I don't know when he signed it. When did he sign it?

Q. You are answering the questions now. You better ask him.

A. All right. I will ask him.

Q. I am sure that Mr. Rhoads would not sign any stipulation as your counsel without your consent.

A. All right. I didn't give him any authority to sign any stipulation.

(2113) BY MR. FREEDMAN:

Q. Didn't somebody tell you, Mr. Maloney, that the con-

ference in Judge Grim's chambers was stalemated for a time because the Local was insisting on the back pay?

A. No, sir.

Q. You didn't know anything about that?

A. No.

Q. And didn't they tell you that the stalemate was only broken when you threatened to invoke supervision?

A. No, sir.

Q. Now, you invoked supervision in order to get control of that arbitration, didn't you, Mr. Maloney?

A. No, sir. I invoked supervision, I thought for the best interests of the Local Union. If arbitration happened to be one of the things, all right.

Q. But you immediately took control of that arbitration, didn't you?

A. No, I didn't. Under the rules of our organization when we took supervision, of course, we went on through with the arbitration, because the judge had agreed that—you agreed with the judge, not me. You agreed with the judge to arbitration. I wasn't a party to that thing at all. I wasn't a party to that proceedings in there.

Q. Your counsel signed the stipulation.

(2114) A. I am telling you that I wasn't a party to that stipulation.

Q. You mean you disapproved of that?

A. Yes, I did.

Q. And you mean you didn't ——

A. You know why I disapproved of it. I tried for three weeks and begged the Local Union to go back to work and see if we can settle it by arbitration. I tried that for three weeks, sent them telegrams and everything else to try to get them back to work and arbitrate the difference, and they wouldn't do it. And then they immediately went to court and agree with the judge to arbitrate it, but they wouldn't agree with me to arbitrate it.

Q. When you tried to force your will on them.

A. At that time there was never nothing said about anything at all, when I asked them to go back to work and arbitrate it. There wasn't anything in any shape, manner or form, action or anything else that looked like a force, but they wouldn't go back to work for the General President, but they would go back to work for a judge. And so they went to court so they could go back to work for the judge in the arbitration.

Q. And you are sore about that?

(2115) A. I am not. I am just telling you the facts. I am not sore about it at all.

Q. That is the facts as you would like to have people believe them.

A. If they are not the facts, the record will show it.

Q. I am sure the record will show it.

A. Yes, the record will show that one.

Q. You bet it will.

A. Yes.

Q. Not the way you painted it.

A. Well, all right. A good thing we don't all paint the same kind of pictures. Hell, the people get tired of looking at them.

Q. Now, as soon as you took over the arbitration you immediately proceeded to waive some of the demands, didn't you?

A. Not any, not any. I didn't take over the arbitration. My assistant took over.

* * * * * * * * * *

(2117) Q. You don't take any responsibility for it, then?

A. Certainly I take the responsibility for him that he would conduct it properly, yes.

Q. Didn't he tell you he waived the request for increase in wages?

A. He didn't tell me he waived the request for increase in wages because he got it.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Over and above the rate which the independents were getting?

A. The independents were getting 25 cents and he got 40 cents, and everybody got their back pay.

Q. That is your recollection of the whole situation?

A. That's right. I have a recollection of that, yes.

Q. So in your opinion you feel that you got them 15 cents an hour more than what the independents were getting?

A. That is what they tell me.

* * * * * * * * *

(2118) Q. Did you have any conferences to determine how the arbitration should be conducted?

A. Personally, no. I think Mr. Wharton had the conference for to try to get the ——

Q. Did they consult with you before determining what policies should be adopted?

A. No. I think I told Mr. Wharton to insist on certain things in the contract, try to get them. He did. He done a pretty good job, I think, between him and Mr. Wolfe.

Q. But you don't know what he did.

A. I can only—the contract talks for itself.

Q. And you did not personally participate in the arbitration?

A. No, no.

Q. You did not engage in any of the conferences to determine how ——

A. Not a bit. Outside of talking to Wharton when he (2119) would be in my office. That is strictly a Local matter.

Q. Did you still consider it a Local matter when you took them over under supervision?

A. Absolutely. They were the ones that wanted to go under supervision. They were very anxious to go under supervision, the great majority of them.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. How did you find that out?

A. By a letter that I got from them.

Q. From whom?

A. I can't think of the fellow's name, but it is in the record here. You read it.

Q. Don't you think if you felt that way about it you should have taken a referendum of the members?

A. Why take a referendum of the Local that wouldn't do anything at all?

Q. I thought you said a great majority of them wanted you to take over?

A. That is what the letter says.

Q. You mean a letter from one or two individuals?

A. Why, he had some signatures on it, I don't know how many. It talks for itself how many was on it.

Q. You took a letter from a few individuals and construed that to mean the great majority were on your side, despite the fact the majority at a meeting voted (2120) against you?

A. I knew that the Local to get straightened out would have to be put under supervision.. In fact, while your conference was going on in Judge Grim's courtroom, Judge Grim sent for me. I was over in the Benjamin Franklin Hotel—to have a private talk with me, which you know. And I had a talk with Judge Grim and I told him certain things. I told him I was going to put the Local under supervision, for one of them. And he says, "Will you tell that to Mr. Underwood?"

I says, "I certainly will." And he brought Mr. Underwood in the chambers. It was Judge Grim, Mr. Underwood and myself. And I told Mr. Underwood then I was going to put him under supervision.

And Judge Grim said to me, "Now, listen, we might get this ——" or words to this effect. I don't want to say I am giving the exact words. He says, "We are going to have a meeting," and he said, "to see if we can put it up to the

Local Union". He says, "Will you wait until Tuesday morning to put the Local under supervision?" We will wait until after the Monday meeting. That is what he says.

I says, "I will if you ask me to do it."

(2121) And he says, "I am asking you to do it."

And I says, "All right. If that is your request, Judge, I will do it. I will wait until after the meeting of Monday." Underwood there heard the story. And I walked out of the room at that point, I believe; thanked him for his interest in the situation.

That is a correct statement as far as I can remember of what happened in Judge Grim's courtroom. And I walked out, and I didn't stay around the Court House, either. I got on the train and went back to Washington. And I understand that the meeting lasted three or four more hours after that. I didn't even stay there. I don't know what was in the meeting, and I didn't get a report from it because I wasn't there, and I told my attorneys not to participate in that, and my understanding is that the Court requested them to come in as a friend of the Court.

Q. The Court requested who to come in?

A. Request for Mr. Rhoads to come in as a friend of the Court.

Q. I see.

A. That is my impression.

Q. Who told you that?

A. Well, that is my impression.

(2122) Q. From whom?

A. I don't know whether I got it from Mr. Trescher, Mr. Rhoads, or Mr. Thomas, I got it from one of the three, because they is the only three over there that I knew. And I didn't stay. And after getting the conference with Judge Grim, I got on the train and went to Washington. The meeting lasted four or five hours after that, and Mr. Underwood knew that that Local was going to be put under supervision Tuesday, after the Monday meeting, because I told

him so, and told him in the presence of Mr. Grim—Judge Grim. And Judge Grim asked me to wait until after the Monday meeting, which was Tuesday.

Q. Judge Grim was trying to settle this case, wasn't he?

A. Yes, he was. He done a good job trying to settle it, too.

Q. Mr. Maloney, at the time you were at the convention at Atlantic City of the A. F. of L. during that strike, how long were you there?

A. Oh, I was there for a week or so. You see, we have a meeting of the ——.

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BY MR. FREEDMAN:

Q. Can you give us the date of your arrival and the (2123) date of your departure?

MR. THOMAS: Go ahead and answer the question as you were going to.

THE WITNESS: Go ahead. Wait until I answer the first one.

BY MR. FREEDMAN:

Q. Go ahead. I am not stopping you. ——.

THE COURT: We will go over to page 383, at the bottom of page 383. The question is, "Can you give us the date of your arrival and the date of your departure?"

THE WITNESS: That is the question I was trying to answer. I was trying to explain it to him. I am not trying to evade any of these questions. I am trying to answer

them. When we go to Atlantic City, I happen to be on the Executive Council of the Building Trades Council Department, and we always meet the week before or the middle of the week before the Executive Council meets. And we were there on the Wednesday of the week before the Council met, and the Council met the following week. So I would say all together I was there maybe anywheres from a week to ten days.

(2124) BY MR. FREEDMAN:

Q. Now, can you give us the date of your arrival? And the date of your departure?

A. My departure—I can't give you the dates, because I would have to look them up. My departure was the day before the case was scheduled to come to trial in Judge Grim's court, whatever date that was.

Q. Did you leave Atlantic City to come straight to Philadelphia?

A. That's right, come right to the Benjamin Franklin Hotel.

Q. Now, did you draft the order terminating the strike yourself, or was it done for you?

A. As I told you yesterday, I asked the assistance of our counsel for to get the order straight, the record straight, and he helped to draw the ——

Q. And where was that done?

A. Just what order are you talking about now?

Q. The order terminating the strike.

A. Terminating the strike?

Q. That's right.

A. Well, Mr. Freedman, I would have to look that up. I don't know whether I was in Atlantic City or Washington.

Q. Did you do that yourself?

(2125) A. Do what myself?

Q. Draft that order.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. No, I got assistance from the attorney.
Q. Well, did he do it in your presence?
A. Yes, surely.
Q. Was anybody else present?
A. Nobody else, no.
Q. Just you and he drafted that letter?
A. That's right in longhand and then had the stenographer ——

MR. WOLFE: Are you referring to the telegram of August 11? You referred to a letter.

THE WITNESS: You are talking about the order, I presume, where I gave them twenty-four hours for the settlement.

BY MR. FREEDMAN:

Q. Well, you only issued one order terminating the strike, didn't you?
A. That's right.
Q. Well, that is the order I am talking about.
(2126) A. I think that is the order. Well, there was another order asking them to go back to work—it wasn't an order, but a telegram asking them to go back to work.
Q. That wasn't an order, was it?
A. No, it wasn't an order.
Q. You know what I mean when I say order terminating the strike.
A. I don't want to get mixed up. You told me if I didn't know, to ask the question, yesterday. That is what I am asking you.
Q. Absolutely, if there is any question in your mind.
A. If we both understand one another, we won't get in any dispute.
Q. That's right. If there is any question in your mind, you feel free to ask me anything.

A. All right, I will.

Q. Are you clear on that now, which order I meant?

A. Yes, that's right.

Q. Now, did you meet any other contractors or employers while you were in Atlantic City?

A. Well, there is—I can't answer that yes or no. I will tell you why I can't answer that yes or no. Invariably there is some contractors around every time we have a meeting. I wouldn't say contractors. They might be (2127) their labor representatives around, their labor relations man might be around. I think that the Abasco man was around, I am not sure of that. He is generally around the meetings.

Q. Which man did you say?

A. The Abasco Construction Company, a fellow name of John Garvin.

Q. Do you remember talking to him?

A. Yes, he was in there. I am almost sure he was there.

Q. Was he interested in this strike?

A. Not a bit.

Q. What other contractors did you meet?

A. I didn't meet any contractor was interested in the Philadelphia strike at all.

Q. Didn't talk about it at all?

A. Didn't talk about it to nobody, not to any contractor. It was a topic of conversation among the labor people.

Q. And you didn't meet or talk to any contractor while you were in Atlantic City?

A. Not as I recollect, Mr. Freedman, no.

Q. Now, after the notice of the lawsuit did you communicate with the contractors in order to oppose the lawsuit of the Local Union?

A. No, sir, I didn't.

(2128) Q. Did your representatives do that?

A. Not that I know of, not to my knowledge.

Q. Well, was it being handled? Was the matter being handled by your representatives or by you?

A. The matter was being handled by me and my attorney. I am just trying to think now when I got the order—when I found out about it. I don't know whether I found out about it in the newspaper or whether I was handed—or whether I was handed a notice of it or not. I can't remember that one, either.

Q. I am talking now about the course of conduct which you took.

A. That's right. You are talking about the court order notifying us to be, to appear in court on such-and-such a day. Is that what you are talking about?

Q. I am talking about the lawsuit, notice of the lawsuit, after you got notice of the lawsuit.

A. Oh, after all this is over?

Q. No, after you got notice of the lawsuit which was started in Federal Court. Do you remember there was a summons issued?

A. Summons issued for me to appear in court?

Q. You were served with a summons.

MR. WOLFE: With a complaint.

(2129) THE WITNESS: I am trying to tell you that I can't remember just now how I got served with the summons.

BY MR. FREEDMAN:

Q. That doesn't matter, but what I am asking you is after you got served with it, didn't you get in touch with the contractors regarding the defense against the Local?

A. I didn't.

Q. Did your representatives?

A. Not to my knowledge they didn't.

Q. Who handled your defense?

A. Mr. Thomas.

Q. And are you able to state whether he got in touch with the contractors?

A. Not to my knowledge. Of course, he can talk for himself. Not to my knowledge, he didn't.

Q. After the lawsuit was instituted, can you state whether or not there was any collaboration in regard to the defense against the Local Union, any collaboration with the contractors?

A. I didn't have any, Mr. Freedman.

Q. Do you know whether your representatives had any?

(2130) A. He would have to talk for himself.

A. The only one—so far as I know, sir, no.

Q. Did you get any information about it?

A. No, I didn't.

Q. Did you ever hear anything about it?

A. Well, I heard about it, the contractors had a lawyer up there in the case when the trial started. I don't even know his name.

Q. But you don't even know what was done after you were served with the summons and complaint?

A. No; I don't. After I gave it to the attorney, and he got Mr. Rhoads for to represent us. His assistant in Philadelphia. That is all I know, he said that he had contacted a Mr. Rhoads and he was going to represent it. I didn't know Mr. Rhoads from this table, never heard of him.

Q. Did you talk to McDonald about that time?

A. No, sir.

Q. Didn't you communicate with Mr. McDonald at that time?

A. No, sir.

Q. Do you know whether any of your representatives communicated with him?

(2131) A. Not to my knowledge.

Q. Wasn't he told to stay away from the courtroom?

A. Not to my knowledge. If he was, it wasn't any order of mine.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. How about your representatives?

A. I didn't give them any orders for to tell him to stay away, either.

Q. Do you know whether they told him to stay away from the courtroom?

A. I wouldn't know.

Q. Now, Mr. Maloney, did you have some understanding with the contractors before you sent your letter terminating the strike?

A. None whatever.

Q. Before you sent your order terminating the strike?

A. None whatever.

Q. You didn't confer with any of the contractors, directly or indirectly?

A. No, I didn't. The only time I conferred with them was when Mr. Underwood was there himself.

Q. Do you deny that the contractors knew you were going to send out the order terminating the strike?

A. They absolutely didn't know it from me, and nobody else knew it from me, outside of my attorney, because (2132) there was nobody around to find it out. If they found it out, they guessed at it, or something else, and I see they do a lot of guessing in Philadelphia, and they have wild rumors down here.

Q. Now, did Carter consult you or communicate with you in any way about bringing the action against Underwood?

A. No, sir.

Q. You mean you didn't even know about it?

A. I didn't know anything about it. I didn't prefer charges against him, or didn't ask him to prefer them, or didn't talk to him about them.

Q. And you didn't even know he was going to prefer them?

A. Not until I saw the charges.

Q. Now, you never held any hearing before invoking supervision, did you?

A. No.

Q. Didn't you think it was necessary?

A. No.

Q. You stated you were going to give them, in your order invoking supervision you stated you were going to give them a hearing at a later date, didn't you?

A. That's right.

Q. Why didn't you give them the hearing first if you (2133) felt a hearing was necessary?

A. I didn't think it was necessary.

Q. Why did you give it to them later?

A. Because if they wanted to come in and hear their side of the story, I was glad to hear it.

Q. Why didn't you hear their side of the story before you invoked supervision?

A. I didn't think it was necessary.

Q. Why did you think it was necessary after you invoked supervision?

A. They had the privilege of appeal, and if they wanted to come in there, they could state their case.

Q. Well, that wasn't the appeal, was it?

A. Yes, it was.

Q. The hearing?

A. When we had a hearing after supervision, certainly it was.

Q. The hearing that you scheduled?

A. Yes.

Q. And the order; you mean that was the appeal?

A. That is the appeal. Anybody had objection, go in and get a hearing. It gave them an appeal down in Miami, and nobody showed up and got a letter from you, I believe, if I am right, saying that it was too far away and they (2134) couldn't come, so we appointed a committee and canvassed the whole district around here. The committee spent a week in here, four different places around this territory and met, and when we got out we find out instead of having

a hearing—letting the men come to a hearing, I understand there was a letter put out advising them not to come.

(2135) Q. Do you have a copy of that letter?

A. No, I haven't.

Q. Did you ever see it?

A. No, I don't believe I did.

Q. Who told you that there was such a letter?

A. I believe Mr. Wharton told me.

Q. Did he say he saw it?

A. Well, I presume he saw it when he said there was a letter out, I don't know. Is there a letter like that in the file?

Q. No questions, please.

A. I just want to ask him if there is a letter like that in the file.

Q. You can't ask your attorney anything right now.

A. These are my records I am talking about.

Q. You can talk to them after we get finished with the examination.

Q. Now, did you attend that so-called hearing in Washington after you invoked supervision?

A. No, sir.

* * * * * * * * * *

(2136) BY MR. FREEDMAN:

Q. Now, will you answer the question?

A. What does "so-called" mean in the statement about the meeting?

Q. Well, you called a hearing, didn't you? You said that there was going to be a hearing, didn't you?

A. The order said that, yes.

Q. That's right. Now, do you regard what happened at the time and date that the hearing was supposed to be held that that was a hearing?

A. That's right.
Q. Were you there?
A. No, sir.
Q. Did you get a report of what happened?
A. Yes, I did.
Q. In writing?
A. Yes.
Q. Where is it?
A. It is in the file.

* * * * * * * * *

(2137) Q. Now, who was present at the hearing, Mr. Maloney?
A. The report shows who was there, Mr. Freedman.
Q. Don't you have any recollection?
A. No, I don't, outside of Mr. Carter, Mr. Thomas, Mr. Underwood. I don't know who else.

* * * * * * * * *

Q. Mr. Thomas presided at that so-called hearing, didn't he?
(2138) A. No, sir. Mr. Carter presided.
Q. And what was Mr. Thomas' function?
A. What do you mean by so-called? Please explain it to me so that we will understand everything that we are talking about here.
Q. All right. I am calling it so-called because you called it a hearing.
A. That's right.
Q. Is that right? So I am saying that it is the so-called hearing. You called it a hearing, and that is why I am calling it a so-called hearing. Is that clear to you?
A. No, it isn't. So-called hearing leaves the impression to me that it is not a legal hearing and not a proper hearing.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. The conclusions can be put on later.

A. That is the interpretation I put on it. I am not quarreling with you. I am trying to clear the thing up so that we will understand one another.

Q. Is there any doubt in your mind about the incident that I am talking about?

A. If you mean the incident that, the fact of the matter is there was a hearing there, and if you mean there was not a hearing there or there was a hearing there, I agree with you, there was a hearing there.

(2139) Q. Well, you don't have to agree with me about anything. I haven't taken any position yet.

A. I know.

* * * * * * * * *

Q. You say that Mr. Carter presided at that meeting. Let us call it a meeting.

A. I understand. That is my impression.

Q. Who designated Mr. Carter to preside?

A. I did.

Q. When?

A. Sometime before the meeting, I don't know the exact date.

Q. Why did you pick Mr. Carter?

A. Because I thought he was the best man on this situation.

Q. Even though he had already placed charges against Underwood?

A. I don't believe that any charges were placed at that time. Maybe I am mistaken.

Q. You know that he was at odds with Underwood and the Local, didn't you?

A. I didn't know he was at odds with them at any time, no.

Q. You knew that there had been considerable friction between Underwood and Carter, didn't you?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. There is always that when you try to settle anything. (2140) There is always one side claiming they got a little friction. That don't necessarily mean they are at odds with one another.

Q. You said before that Carter had been reporting to you about dissension in the Local for two or three years, didn't you?

A. Yes, he did, about different things that happened at the meeting.

Q. And you felt that despite his feeling toward the Local he was the best man to preside?

A. That's right. He didn't have any animosity against the Local Union.

Q. Why didn't you put in McDonald, who was the International vice-president?

A. I didn't want him.

Q. Why didn't you want him?

A. Because I didn't want him. I didn't think he was the man. I pick the men for my best judgment.

Q. What function did Mr. Thomas serve at that meeting?

A. You will have to ask Mr. Thomas. I wasn't at the meeting.

Q. Didn't you assign him?

A. I did not.

Q. You don't know what part he played?

A. I don't know. I wasn't there.

(2141) Q. Did you direct that a stenographic record of the proceedings be kept?

A. I didn't have anything to do with the meeting at all. I just called—told Carter, and sent a letter to Carter and notified him to be chairman of the meeting. What happened at the meeting, I wasn't there, any more than you were.

Q. Did Carter hold any official position in the International Union?

A. No, sir.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Didn't you give him any instructions about what to do regarding the hearing which was to be conducted?

A. I did not. I told him to conduct the hearing.

Q. That is all you said to him?

A. Well, whatever the letter shows for itself, I don't know what I said.

Q. Did you send a letter to Carter?

A. I believe I did, yes. It is in the file, I believe.

Q. You sent a letter to Carter directing him to hold the meeting?

A. That's right, like I sent an order to anybody.

* * * * * * * * *

Q. In this letter of yours to Carter (referring to Plaintiffs' Exhibit 400) you simply designated him as your deputy and hearing officer. Now, isn't it part of your policy to (2142) report all hearings stenographically?

A. No.

* * * * * * * * *

Q. Well, wouldn't you report the important hearings stenographically?

A. It is not a prescribed policy to do that.

* * * * * * * * *

Q. Was it intended that the proceedings which were had at that meeting were to be the basis for a further decision on your part, or on the part of the organization?

(2143) A. Well, it was to give me information, yes.

Q. Just to give you information?

A. Yes, what the committee from 542 had on their mind, what they wanted.

Q. And that was the real purpose of that meeting?

A. That's right.

Q. And didn't you regard it as necessary to have a stenographic record so that you could get the exact statements of all of the parties in interest?

A. I am trying to think, Mr. Freedman, if you will let me answer your question.

Q. You go ahead.

A. I am trying to think at any time where we held a stenographic meeting of a meeting, at any meeting we ever held in the last twelve, thirteen years that I have been president, or before that when I was vice-president, and I can't remember one.

Q. Well, have you had hearings before?

A. Oh, yes, we have had lots of hearings.

Q. And haven't you made any written record of the questions and answers propounded, or charges?

A. If you hear them in front of the Board, the Board generally—I am a little bit foreign to this—I am trying to tell you the policy. Hearing before the Board, (2144) they always take notes of their own on the situation for their own benefit.

Q. Well, is there any one member of the Board designated to make a record of the answers and questions?

A. The secretary is, yes.

Q. And isn't there any formal procedure adopted at any hearing?

A. No.

Q. You don't have any formal procedure?

A. No.

Q. Don't you first present the accused with the charges?

A. Yes.

Q. And then don't you proceed to prove the charges, or do you ask him to disprove them?

A. Not necessarily. We present him with the charges and he has an opportunity to refute them or deny them, or whatever he wants to do; whatever you want to call it.

Q. You give him the charges and you say, "Here, disprove them"?

A. That's right, like any other case.

Q. Is that your regular procedure in your Union?

A. Well, that is generally the procedure when we give him the charges. When he comes up there, then we read the charges and he has got an opportunity to answer them.

(2145) Q. And is that the procedure which was followed here?

A. So far as I know.

Q. In all of the hearings that were held in this case, both with respect to Underwood and the Local?

A. As far as I know, Mr. Freedman, that is the case. Would you let me read that letter? Thank you.

Q. Were you told that the Local was denied the right to counsel at that meeting? Let us identify that by date. I think that letter indicates the date.

A. I can answer the question for you?

Q. That meeting was scheduled for August 26, 1952, in Washington, is that right?

A. That is what the letter says. I just read it.

* * * * * * * * *

(2146) "Q. Were you told that the Local was denied the right to counsel at that meeting?"

THE WITNESS: That is not the policy of our International Union to let outside counsel in at our meetings when we are holding hearings.

BY MR. FREEDMAN:

Q. You have your own counsel at these hearings, don't you?

A. Very seldom.

Deposition of William E. Mahoney as on Cross-examination, Offered by Plaintiff

Q. Didn't your own counsel sit at this hearing on August 26?

A. He can talk for himself.

Q. Well, didn't you know that he sat in?

A. I believe his name is on that report, on the report.

Q. Do you disapprove of his presence there?

A. I didn't disapprove of his presence. He is our counsel.

Q. Did he have a right to be there?

A. As our counsel he did, yes.

Q. Why shouldn't the accused have a right to counsel?

A. Because our constitution in our local trials specifically states, if I am not mistaken, or unless it has been changed, that they can't bring outside counsel in, it has got to be a member of the organization, and the same rule, (2147) I guess, would apply to the International Union.

Q. Will you be good enough to point out to me the provision of the Constitution which says that you can have your own counsel?

A. Well, let's see. You have got the Constitution, haven't you, Mr. Freedman? You know it is in there. I can look through it. Suppose we, to hurry this thing up a little, I will make a statement: It is the policy of our International Union not to let outside counsel in our meetings or hearings. Does that clear it up for you?

Q. Well, I wanted to see the provision in the Constitution.

A. I just wanted to hurry the thing up for you. Page 100, Article 23, Section 7 and—I mean subdivision 7, and Section N is marked out there with a pen.

Q. The provision which you have marked out here states "Complainants and defendants may present their own cases or by counsel selected from among the membership of the International Union of Operating Engineers." Now, that is part of Article 23, Subdivision 7, Section 1, which relates to trials for Local Unions, is that right?

A. That's right.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Now, do you have any similar provision ——

A. That is the question you asked me, isn't it?

Q. I am asking you now whether you have any similar (2148) provision governing hearings by the International Union?

A. I told you, the policy of the International Union is not to let outside counsel into the hearing.

Q. So that actually you have no provision, no constitutional provision covering the International Union as far as counsel is concerned?

A. No, not in the Constitution.

Q. That is something you adopted as a policy?

A. Something that has been adopted as a policy for a good many years, for the last thirty, forty, forty-five, fifty years, that has been the policy of our International Union.

Q. That is the policy, but not based on constitutional provision?

A. Well, I would have to look up the Constitution pretty close.

Q. Your counsel is there. As a matter of fact, he just gave you the part of the Constitution. If it is in there, may I see it?

BY MR. FREEDMAN:

Q. Well, do you want to make an answer, in view of that?

A. Yes. It says in Paragraph 5 of Section 7—no, of (2149) Article 5—Section 7 of Article 5—do you want me to read the whole article?

Q. Well, no, I am asking you to let me know.

A. It says "The General Executive Board may hold hearings and conduct trials and decide appeals in connection with any matter, complaint, business or case coming before it and the decisions of the General Executive Board thereon, and its findings of facts, shall be final, conclusive and bind-

ing. It shall have full power to determine the method of procedure and the times and places for the holding of hearings, trials and appeals. It shall also be empowered to interpret the provisions of this Constitution and decide questions of law arising thereunder."

Q. Wherein does that provision state that the accused shall be deprived of the right of outside counsel?

A. I just read this article to you. It don't say anything about the accused. It says it shall have the full power to determine the methods of procedure.

* * * * * * * * *

(2150) Q. Do you have a reporter in attendance at other meetings?

A. Not all the time.

Q. Do you have them at your conventions?

A. Yes.

Q. Do you have them at your Executive Board meetings?

A. No.

Q. Why do you have them at the conventions?

A. So they can have a complete report of everything that happens.

Q. Do you have regular reporters that you use?

A. No.

Q. Have you used reporters for any other purpose than at the convention?

A. Not as I can recall, Mr. Freedman.

Q. I noticed in your financial sheets that you did have several disbursements for court reporters during the past year. Will you state what that was for?

A. That might have been local—was it local ——

Q. Relating to the affairs of Local 542, but from the International Union.

(2151) A. From the International Union?

Q. That's right.

A. Yes. Well, that was in the case where we were taking the—trying to find out the sentiments of the membership around here. Is that what you are referring to?

Q. I don't know what it is. I just saw the notation there.

A. I believe they had a reporter there at that time, yes.

Q. At what time, will you tell me?

A. Well, the week that they made the hearings.

Q. When you say they, who do you mean by they?

A. I mean the committee: Mr. Delaney, Mr. Wharton, Mr. Boston, and Mr. Duffy, and sometimes Mr. Carter; some of the hearings with Mr. Carter.

Q. And these hearings started when and for what purpose?

A. I don't know the exact date, but I will have to look it up for you.

Q. Approximately, as close as you can estimate?

A. Oh, three or four weeks ago.

Q. I see. And those hearings were for what purpose?

A. For hearing—those meetings were set up after we got the letter from you saying that Miami, Florida, was too far to go for to hold—for the men to go, for to inconvenience them to have the hearing on the question of supervision. So I set this committee up and sent them around (2132) all the different parts of this territory, so that the men would be convenient to them, and the committee set hours in the afternoon and the evening so anybody desired to could come to the meeting and express their opinion and what they thought about the situation.

Q. And where did you hold these hearings?

A. Well, one held in Harrisburg, one held in Philadelphia, one held in Delaware, and I think there was one held in Scranton or Wilkes-Barre. I don't know.

Q. Were they reported stenographically?

A. Yes, they were.

Q. Where is the record?

A. Where is the record?

Q. Yes.

A. I think it is in the hands of the committee. They haven't completed.

Q. Does the International have a copy of that record?

A. No, I don't think so.

Q. The committee is working under your jurisdiction, isn't it?

A. Yes, but the committee hasn't finished their report.

Q. Why weren't we told about those stenographic notes when we asked for production of all of the documents?

A. Because they probably wasn't in—I haven't got them (2153) yet, so I can't give you something I haven't got.

Q. Who arranged for the reporter, do you know?

A. One of the committee.

Q. With your consent?

A. Yes, I told him to get a reporter.

Q. Were there any other occasions when you used a reporter?

A. I just told you a few minutes ago, not to my knowledge. That I can recollect, I should say—not my knowledge—I can recollect at the present time. I even forgot about that one until you brought it to my attention.

* * * * * * * * *

(2154) Q. Who made the arrangements for the hearing in New York on the charges against Underwood?

A. Well, I think the record will show that Mr. Underwood got a letter and told him that the charges were going to be brought in front of the General Executive Board on that date.

Q. Well, who made the arrangements for the hearing?

A. What do you mean, make arrangements?

Q. Well, first of all, who fixed the date for the hearing? What was that date? In September, wasn't it?

A. Yes, it was in September, yes.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Who fixed that date?

A. It probably was me.

Q. In consultation with anybody else?

A. No, just notified them the Executive Board was going to meet on that time and that his case would be heard, but I don't know whether I designated the day or not. But the order would talk for itself, and you evidently got a copy of it.

Q. Who made the arrangements for the hearing that was to be conducted on the charges against Mr. Underwood?

(2155) MR. WOLFE: What arrangements are you referring to?

THE WITNESS: That is what I was going to ask him myself.

BY MR. FREEDMAN:

Q. How the hearing was to be conducted and who the hearing was to be conducted by and so on.

A. The General Executive Board was meeting at that time, and he was notified that the General Executive Board was going to be in session, and he come there for a hearing, and when he come down there for a hearing I stepped out of the Chair, had nothing to do with the hearing at all. I stepped out of the Chair and got on there and appointed Mr. Delaney as temporary chairman.

Q. Who appointed Mr. Delaney?

A. I did.

Q. Did you have any prior discussion with Mr. Delaney about it?

A. I didn't.

Q. You didn't discuss the case at all with Mr. Delaney?

A. I did not.

Q. You mean he did not know about the case prior to that time?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. It was public property, Mr. Freedman. Everybody knew (2156) about it.

Q. But you had not discussed it with Mr. Delaney?

A. No, not in any way, shape or form.

Q. Had you discussed it with any other members of the Executive Committee?

A. No, I didn't.

Q. Had your representatives?

A. No, they didn't, to my knowledge.

Q. Go ahead.

A. I am giving you the answer.

Q. You stepped out of the Chair and Mr. Delaney took over.

A. That's right.

Q. I take it, then, that there was no special day fixed for hearing; it was just this was the meeting of the General Executive Board?

A. Yes, and his case was put on at that time. I don't know whether he was notified a day ahead of time or the letter set the date.

Q. I am asking you about your recollection.

A. You are trying to get my recollection when the letter talks for itself, Mr. Freedman.

Q. What letter are you talking about?

A. The letter notifying him that there was a hearing (2157) of the General Executive Board.

Q. What has that got to do with your stepping out of the Chair and appointing Mr. Delaney?

A. You are asking me about dates, and I am trying to tell you the letter will talk for itself. Your own question, and just don't switch over, Mr. Freedman. Let us be honest with the thing. You asked me about the dates. I don't blame you, but let's be honest with it. You asked me about the dates, and I am trying to tell you the letter will talk for itself.

Q. Are you all through?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. Yes.

Q. All right. Now, will you kindly proceed and tell us just what happened at that hearing. You say you took the Chair at the General Executive Board.

A. Yes. Called the meeting to order.

Q. Yes.

A. And stepped out of the Chair and notified them and asked Mr. Delaney to take the Chair. And Mr. Delaney took the Chair, and I sit over on the sidelines.

Q. And then what happened?

A. Well, they read the charges.

Q. And Mr. Underwood had a chance to answer them?

A. And did answer them with a lengthy report; lengthy (2158) report answer. Then I got up and stated the question about what happened in the court, as far as I knew about the case, and told the General Executive Board what they accused the International of, conspiracy and one thing and another. And then some of the gentlemen, one of them I think is in the room now—maybe two of them—asked me a lot of questions—of me. Didn't I think that Underwood had done a good job? They didn't talk about the charges at all. The only man that talked about the charges was the gentleman at the other end of the table, Mr. Leone. Isn't that right? He said that he shouldn't be crucified or shouldn't be held responsible for what their attorney done, and what he said in the indictment, they ought to take that under consideration. After that remark no more was said to me and I walked out of the room.

Q. That is as much as you know about it?

A. That is about all, unless there is something you can ask me.

Q. Did you talk to any of the members of the Executive Board after that?

A. I did not—I talked to them, yes, but not about this case.

Q. And you did not discuss it with them in their (2159) deliberations later on?

A. I did not.

Q. You did not tell them what your wishes were?

A. I did not.

Q. How about your representatives?

A. No, not to my knowledge.

Q. Was your counsel present at that hearing?

A. You mean in the hearing?

Q. Yes.

A. He was over in the General Executive Board a minute ago when they were discussing the question—or do you mean that, or in the main hearing where they were all at?

Q. How many hearings were there?

A. There was a hearing.

Q. On Roy Underwood.

A. You were just talking about the General Executive Board and what happened in there, when they were in executive session. I put that interpretation. Or are you talking about the meeting where we all was and where the charges were heard?

Q. I think I said hearing, but I will rephrase my question.

A. If you are talking about the main hearing, that is (2160) the question I am after.

Q. How many hearings were there?

A. There was only one. But you got over into the General Executive Board and asked me if I influenced some of the members at the time—when they were deciding the question. Isn't that what you were trying to get at?

Q. I didn't say influence. You said it. Remember, you said it.

A. Yes, I know what you said, but you meant the same thing, see, that I asked them, if I talked to them about the case, isn't that right?

Q. I didn't use the term "influence".

A. Maybe I used it.

Q. You used it.

A. Maybe I used it.
Q. You used it.
A. But you left that inference with me.

MR. WOLFE: Well, you so averred in the complaint.

THE WITNESS: Yes, you left that inference with me, Mr. Freedman.

BY MR. FREEDMAN:

Q. It couldn't be your conscience is coming up to haunt you, is it?

(2161) A. Mr. Freedman, you know I am just an engineer. I am not a fellow, technical man or attorney or anything like that that picks up the least little thing around in the language or anything like that. My English was sadly neglected in school, and what I do know I learned it by hard knocks as an engineer, and maybe you didn't use the word "influence". I don't say you did, but that is the inference you left to me, anyway.

MR. FREEDMAN: Now, Mr. Reporter, will you go back and repeat my question.

(The question was repeated by the reporter as follows: "Q. Was your counsel present at that hearing?")

THE WITNESS: Mr. Thomas was there, yes.

BY MR. FREEDMAN:

Q. Mr. Thomas is your general counsel?
A. Yes; he is. He also is a member of the Local Union of 589 or 598, I don't know which one.
Q. Which union is that?

A. Cleveland, Ohio.

Q. Does he engage in the occupation as an engineer?

A. Yes, I guess he did.

Q. When is the last time he operated any equipment?

A. You will have to ask him that.

(2162) Q. You say he did. Do you know of your own knowledge that he did?

A. No, I don't know. I suppose he does. He belongs to the Local Union, got a paid-up card, and had it for a good many years, long before I ever met him.

Q. You say the Local 589, is it?

A. Can I ask him the question?

Q. Well, do you know what one?

A. I don't know. Can I ask him the question?

Q. If he wants to volunteer it, I will permit him to volunteer it.

MR. THOMAS: Local 18, came out of 589.

THE WITNESS: Come out of 589. Was Local 18.

BY MR. FREEDMAN:

Q. And you assume that he is engaging in the occupation as an engineer?

A. He has at one time, yes. That is why he has got his card.

Q. And did he participate in this hearing?

A. He—I believe he read the complaint that you made to the Court. In other words, what do you call that?

MR. WOLFE: Complaint is right.

THE WITNESS: Complaint that you made to the Court about me.

(2163) BY MR. FREEDMAN:

Q. When is the last time that you know of that Mr. Thomas worked as an engineer?

A. I am telling you he had a card before I ever met him.

Q. Will you answer the question, please.

A. I can't answer it because I don't know the answer.

Q. Well, that is the answer to it..

A. Yes.

Q. Did he do anything beside reading the complaint? Did he make any statement?

A. Well, I can't recollect whether he did or not, Mr. Freedman.

Q. In any event, he was there and participating?

A. I wouldn't say he was participating. He was in there. You know, I was a little bit—in the meeting I was very anxious to get out of the meeting. When Mr. Underwood, and Judge Grim and myself were talking—I suppose the proper English would be Judge Grim and Mr. Underwood and myself—was in talking in his chambers, I told Judge Grim that I wouldn't participate in the meeting in any shape, manner and form, that I would report what happened to the Board and they could do as they seen fit in the case.

Q. Did you also tell him that you thought he would (2164) simply be reprimanded?

A. No, sir. I didn't make any statement like that at all. He asked me what kind of a business agent Underwood was, and I thought up to the present time when all this controversy started and this last strike, I thought he was all right. And the proof of that is that I put him on the Law Committee in Seattle, where he got paid for his services.

Q. And you did not tell anybody in chambers that—you did not tell the judge that Underwood would probably only be reprimanded?

A. I didn't, because I didn't have anything to do with the decision, and I told him plainly that I wouldn't have anything to do with it, or preside in the case. I told him

I would explain the situation to the General Executive Board and they could do as they see fit.

Q. Is it your position that you do not have any influence with the Executive Committee?

A. In this particular case, none whatsoever.

Q. I didn't ask you that. I asked you another question.

A. What are you trying to find out?

Q. I asked you a question.

A. I thought we were talking about this case.

Q. We are talking about this case.

A. Well, I say in this individual case ——

(2165) Q. Will you answer the question?

A. In this individual case, no.

BY MR. FREEDMAN:

Q. Do you understand the question? I want to be sure you understand the question.

A. Well, I understand it to this extent: We are talking about Mr. Underwood now and the General Executive Board in this case. Now, just see if I am right. You are asking me a question whether I had any influence with the General Executive Board. Naturally, I think it is in this case and this case alone that you are talking about. I don't think any other case you have got anything to do with, but in this particular case under no circumstances did I have—speak to any of the Board members. I kept my promise to Judge Grim that I wouldn't have anything to do with the case, and I made that statement in front of Mr. Underwood, that he can corroborate, and that I didn't say anything to the Board at all.

And that is what I wanted to get out of the room for. After I had made the statement, I wanted to get out of the room. Now, if you are talking about (2166) outside of that altogether, that is a different question.

Q. Now, I am saying to you generally, don't you have any influence with the General Executive Board?

A. Yes, certainly, as General President I have, sure.

Q. Do they follow your requests?

A. Not all the time.

Q. When did they deviate from your request?

A. I can't specify just one particular thing. They often disagree with me. I don't lay down the plans all the time. I let them decide it. Maybe it don't just suit me—but I wouldn't say suit me. What I meant to say, maybe it is not as I laid it out, they want to change it different, and they do. They are free to make their own decisions.

Q. Now, Underwood asked for counsel at that hearing, didn't he?

A. I can't recollect that, either.

Q. Well, was he denied the right to counsel at that hearing?

A. Well, in the—I answered the first question, I don't know whether he did or not, so if I don't know whether he did or not, I surely don't know whether he was denied or not.

Q. That doesn't follow, but is your answer that you don't know?

(2167) A. Well, doesn't one follow the other?

Q. Not necessarily. But will you please answer the question?

A. I can't answer the question because I can't—I don't know whether he ever made a request or not, and I have got to know whether he made the request or not for to answer the question.

Q. Well, would he have been given counsel had he made it?

A. No, not if he wanted an outside counsel. Now, if he had somebody from the organization, why, yes.

Q. Was any stenographic record made of that hearing?

A. No, sir.

Q. Why not?

A. It is not the policy—we went all through that a few minutes ago. It is not the policy of our International Union.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. What record was made of the hearing?

A. To my observations, every one of the Executive Board made notes—had a pencil in their hand, and I presume they were making notes of what was transpiring for their own information, and the secretary, of course, kept the minutes.

Q. You say the secretary kept the minutes?

A. Yes.

(2168) Q. Where are those minutes?

A. They are in the proceedings of the hearing.

Q. You mean the minutes that were reported in the Journal?

A. That's right.

Q. Are those the only minutes that were kept?

A. That's right.

Q. There are no other minutes kept beyond that?

A. No, I don't think so.

Q. No other record made?

A. No.

Q. Are you sure about that now?

A. I am almost positive.

Q. Can you identify that, please, in the Journal, so that we can have it for the record?

A. Well, if Mr. Thomas can find it, I would be glad to do it. It is in the printed record. Haven't you got a copy of it, of these proceedings?

Q. I would like to identify it for the record.

BY MR. FREEDMAN:

Q. I ask you whether the only record that was made was printed in full in the Journal, and you said yes.

(2169) A. Yes, the only record that is made is put in these official records, and they are copied out of that and put in the Journal.

Q. Did the Journal have a full record of the minutes?

A. I didn't go over the Journal records word for word. I presume they did. If there is errors in it, I don't know.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Why weren't the minutes themselves produced in response to the demand for documents?

A. I suppose they were, as far as I know. There is no hiding on it. Public property. Everybody in the country reads that, including half the libraries in the United States.

Q. Is the full record in the minutes?

A. Yes, of that case, sure. Every case that the Board handles, there is a record in the minutes.

BY MR. FREEDMAN:

Q. Mr. Maloney, I ask you to identify the record which contains the minutes of the Executive Board.

MR. THOMAS: That is different.

THE WITNESS: This is the minutes of the (2170) meeting of General Executive Board of the International Union of Operating Engineers. Minutes of the meeting of the General Executive Board, the International Union of Operating Engineers, held at the Commodore Hotel, New York, September 17, 1952, to September 24, 1952. Case No. 1 on Page 4. Hearing before the General Executive Board on charges against Roy J. Underwood for violation of the Constitution and Ritual.

BY MR. FREEDMAN:

Q. I am asking you to identify that booklet that you have got in your hand.

A. I am trying to. That is the reason I am reading it to you.

Q. No. Identify the whole book or the whole pamphlet.

A. The whole book itself?

Q. Yes.

A. There is two or three books here.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. It is all in one volume?

A. Oh, no, it isn't.

Q. They are all attached together, aren't they?

A. They are, for the purpose of the office, not for the purpose of anything else. Here is ——.

Q. Well, I am going to ask the reporter to mark the (2171) entire thing for identification.

A. Well, that will be all right, only we are not going to give you this one. We will give you a copy of that. Will that be satisfactory to you?

Q. Let us just answer questions, Mr. Maloney.

A. Yes. It is the minutes—that is—there is two or three different ones in here, put them together for the benefit of our office. The one that covers the case is from minutes of the meeting of the General Executive Board of the International Union of Operating Engineers held at the Commodore Hotel, New York, September 17 to September 24. Now, I will tear that out of there.

Q. I don't want you to tear it out. I request that you do not destroy anything.

A. These are for other meetings.

Q. I request that volume be not disturbed.

MR. WOLFE: Let me see it a minute.

THE WITNESS: What the hell are we wrangling about here, anyway? Tell me.

* * * * * * * * *

(2174) Q. Mr. Maloney, you say you did not attend any of the sessions of the Board at which Roy Underwood's case was discussed?

A. That's right. It wasn't discussed in my presence. When they discussed any case and I was sitting in there, I walked out.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Now, Mr. Maloney, at this hearing on the charges against Mr. Underwood, who all appeared against Mr. Underwood?

A. I believe that Mr. Carter explained his charges. I made a statement, as I told you before. And Mr. Thomas read the complaint.

Now, after I got through talking and had been asked a few questions by the gentlemen over there with Mr. Underwood—two of them here in the present—I walked out of the room. And if anybody else made any other statements, I am not qualified for to say so because I wasn't in there.

* * * * * * * * *

(2175) Q. Now, Mr. Maloney, there was no other record of the proceedings involving the charges against Mr. Underwood than what is in this record right here that I hold in my hand, is that right?

A. I think that's right.

* * * * * * * * *

Q. Now, Mr. Maloney, will you tell us what statement you made in that hearing?

(2176) A. Well, I can't give you word for word what statement I made.

* * * * * * * * *

A. Well, I can't give you word for word what statement I made. I explained to the membership that—after the charges were read, I explained to the membership how I was served with this summons and what happened to it, and that my efforts being made for to try to settle the dispute, or the strike, and what methods I had used and what I had done. That is the sum and subject of the remarks.

Q. Well, as closely as you can recall, tell us exactly what you told them.

A. That is about as close as I can recall. That is a year (2177) ago, Mr. Freedman. Why—Now, you can't expect me to remember any more than that particular question—that particular answer than that. I have only got an ordinary mind like yours. Maybe you got a faster one., But that is my question—that is my statements.

Q. Are you all through?

A. Yes.

Q. How long did you talk?

A. Oh, I didn't talk two or three minutes.

Q. Did you read the answer which Mr. Underwood filed in reply to the charges?

A. Yes, I read them afterwards, I believe.

Q. After the hearing?

A. After the hearing, yes. Or heard him read them.

Q. That was after you made your statement?

A. Yes, I think that's right. Now, that is only my recollection. It may have been before he read it, I don't know.

Q. Well, don't you think you should have read them before?

A. Well, I should think I should have. Maybe I did. That is what I am trying to get the idea to you that maybe I did and maybe I didn't; might have read them before.

Q. Do you know whether Halloran was registered at the hotel at the time that hearing was going on?

(2178) A. No.

Q. I am going to ask you to think back now and tell me whether you remember seeing him in the hotel at all.

A. I didn't. I answered that question yesterday, and I didn't see Mr. Halloran. I have been thinking about it all night, thinking that maybe I had made a mistake, but I didn't see Halloran at the hotel. I am positive of that now.

Q. Did you see him in New York at all during that period?

A. No, sir.

Q. Did you talk to him at all?
A. No, sir.
Q. On the telephone or otherwise?
A. No, sir.
Q. Were you told that he had been there?
A. I found out afterwards he had been around there, after I left New York.
Q. You were told that he had been around at the time Underwood was being tried in the hotel?
A. I wouldn't say that. He was in New York, whether at the time he was being tried or not.
Q. You were told he was in the hotel while the hearing was going on?
A. No. Said he was in New York, the statement made to me, because you are liable to see Halloran any place.
(2179) Q. Who told you that they had seen him there?
A. I haven't got the slightest idea.
Q. Would it refresh your recollection if I told you Mr. Wharton?
A. I don't have any impression on that. I thought of Wharton all night, too, whether anybody who would try to say it.
Q. Have you talked to Mr. Wharton since yesterday?
A. Since yesterday?
Q. Yes.
A. Yes, I talked to him this morning.
Q. I meant since the close of the deposition yesterday.
A. Yes, I talked to him this morning.
Q. Can you tell me, Mr. Maloney, whether the hearing on the charges against Mr. Underwood were recorded by a tape recorder or any other recording device?
A. Not that I know of.
Q. If they had been you would have known about it, wouldn't you?
A. I think I would, yes.
Q. Can you tell me whether the meeting that was held

by Mr. Carter and Mr. Thomas on August 26 on the question of supervision was recorded by a tape recorder or any other recording device?

(2180) A. Not that I know of.

Q. Would you have known about that had it been done?

A. I believe I would.

Q. Do you know whether Mr. Thomas sat with the Board in the course of their deliberations?

A. I know he didn't.

Q. How do you know that?

A. Because I wasn't too far away from there. In other words, I was outside in the hall or someplace else, and I know that Mr. Thomas wasn't there.

Q. While the deliberations were going on?

A. That's right.

Q. Didn't you say to some of the members of the Board either during the course of the hearing or before or after that Underwood has got to be taught a lesson?

A. No, sir.

Q. Never said it?

A. No, sir.

Q. Never said it to anybody?

A. No. Before that happened. That is what you are talking about, before the trial, before the decision?

Q. Before or after.

A. After?

Q. Before, during or after.

(2181) A. After, that would be a common remark.

Q. Did you make it?

A. Not that I recall, but I wouldn't say I didn't.

Q. Whom did you make it to?

A. That I don't know. I want to say again that I promised the judge that I wouldn't interfere in that case whatsoever, and I kept my word.

Q. Are all the members of the Board, the Executive Board—that is called the General Executive Board, isn't it?

A. That's right.

Q. They are all vice-presidents?

A. Yes, sir.

Q. Are there any members of the Board who are not vice-presidents?

A. No, sir.

Q. Other than yourself, of course.

A. Well, only the secretary-treasurer.

Q. Is the secretary-treasurer a member of the Board, too?

A. Yes.

Q. Is the secretary-treasurer an elected office?

A. Yes, sir.

Q. How many vice-presidents are there?

A. Seven.

Q. Now, they have no assigned duties under the Constitution, (2182) have they?

A. No.

Q. How do they get assigned to duties?

A. The General President assigns it.

Q. And how many of these vice-presidents are assigned to duties by you, by the General President?

A. Three.

Q. Which are they?

A. Mr. Welsh, Mr. Converse, and Mr. Stuhr.

Q. Welsh, Converse and Stuhr?

A. Yes.

Q. How about McDonald?

A. I told you yesterday that I didn't assign him anyplace.

Q. Isn't he assigned now?

A. No, he isn't.

Q. Does he have any duties now?

A. He is accumulating some duties for himself, but he is not under any orders from me.

Q. Is he getting paid?

A. Yes.

Q. How many other members of the Executive Board are engaging in any duties?

A. Three.

Q. Just those three?

(2183) A. Yes.

Q. I mean the three that you mentioned, or three additional?

A. Yes, three I mentioned.

Q. Beside McDonald?

A. Yes.

Q. Who are the other three beside McDonald?

THE WITNESS: Wait a minute, Bill, let's see what he is trying to find out.

* * * * * * * * *

Q. How many vice-presidents are there who are not performing duties as vice-presidents?

A. They are all performing duties as vice-presidents.

Q. I mean extra duties, such as the three that you are talking about; the three that you mentioned, and McDonald.

A. You objected yesterday to me using certain words and certain things and I object to your putting McDonald in it all the time, too. I explained that case very thoroughly, I believe.

Q. You have a right to object. You put any objection you want on the record.

(2184) A. All right. Now, we will have a mutual—What is fair for you, Mr. Freedman, should be fair for me. Well, I would say that there is—If my question is right, you want to know the other vice-presidents?

Q. You have stated ——

A. You read the question to me so I can tell.

Q. You have stated that three vice-presidents whom you have named are engaged in certain assigned duties, and Mr. McDonald is doing other duties which you say he has taken for himself. That is correct, isn't it?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. That's right.

Q. Now, what are the other three vice-presidents doing?

A. They represent a Local Union in the territory where they are.

Q. I see. Will you specify who they are, please?

A. There is Mr. Imhahn from Local 399 of Chicago. Mr. Converse, Local 18, Cleveland. Mr. Joseph Delaney, Local 15 of New York City, and I think that completes the set.

Q. Do those three vice-presidents get any income as vice-presidents?

A. Yes.

Q. How much?

A. Fifteen thousand dollars a year.

Q. Aside what income which they get from the Local?

(2185) A. I suppose they get an income from the Local, I don't know.

Q. Is there any provision in the Constitution for the pay of the vice-presidents?

A. No, sir.

Q. Well, how is it that they get pay?

A. Set by the General President.

Q. That is set by the General President?

A. Yes.

Q. When did you set that?

A. Oh, offhand I would say about '44. That is a guess.

Q. The pay of all other officers is fixed in the Constitution, isn't it?

A. Only two, the president and the secretary.

Q. They are fixed by the Constitution?

A. That's right.

Q. And you have it in your discretion to fix the pay of the others?

A. That's right.

Q. Why give them any pay at all?

A. I don't expect anybody to work for nothing.

Q. But you wouldn't have to give them anything if you didn't want to, would you?

A. Well, they might vote it for themselves, I don't know. (2186) They have that power.

Q. How do they have the power, if it is not provided for in the Constitution?

A. Well, you know labor unions as good as I do. They assume a lot of power sometimes. This copy stays. Do you want a photostat of that, or do you want me to send you a copy?

THE COURT: That has to do with P-121-A.

Q. * * * Did Mr. Thomas follow you after you made your statement at the hearing before the General Executive Board on the charges against Underwood?

A. It is my best recollection that he did. That is not a positive, but it is my recollection.

Q. Did you attempt to answer the charges in the complaint?

A. No, only what these members asked me about—the questions from the floor, or spoke from the floor. Mr. Leone and Mr. ——

Q. And I understand that related to Underwood's good conduct during his tenure in office?

A. Some of it did. It was far from the question before the house, but that is what they talked about, outside of Mr. Leone.

(2187) Q. What did he talk about?

A. He really talked to the point. He talked about the order of the Court, as I told you before, and that he shouldn't be criticized or held responsible for what the lawyer did. In other words, what the lawyer said in the complaint, he felt that that should not be—the Local should not be held—or Mr. Underwood should not be held responsible for what the attorney done in the case.

Q. And other than that, the only other questions related to ——

A. They were talking about Underwood's record.

Q. —good conduct, his record?

A. That's right. That is the best of my recollection. Maybe they said something else, but I don't know.

Q. Mr. Underwood's record was good, wasn't it?

A. I said this morning I thought it was pretty good until all this trouble started.

Q. He did a good job of organizing and running the Union, didn't he?

A. He didn't do a pretty good—he didn't do a good job organizing because a lot of the western part of this jurisdiction wasn't organized, but he done a fair job of running the Union, yes.

Q. Are you able to state how much was unorganized before (2188) he came in, how much of the territory?

A. Quite a little, quite a little.

Q. Are you able to state how much he organized after he came in?

A. No, I am not.

Q. Are you able to state what the membership was before he came in?

A. No, I would have to look at the record.

Q. Are you able to state how much the membership was at the time you removed him from office?

A. No, I can't do that, either. Would you read that last question back that Mr. Underwood—Mr. Freedman asked me that I answered.

MR. FREEDMAN: Sure. Will you please do that, Mr. Reporter. If you want to add anything to it or qualify it, go ahead.

THE WITNESS: No, I just want to hear the reading of the question.

(The question was repeated by the reporter as follows:

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

"Q. Are you able to state how much the membership was at the time you removed him from office?")

THE WITNESS: No, the one before that.

(2189) (The question was repeated by the reporter as follows:

"Q. Are you able to state what the membership was before he came in?")

THE WITNESS: No, not that one. Back a little further.

(The question was repeated by the reporter as follows:

"Q. He did a good job of organizing and running the Union, didn't he?")

BY MR. FREEDMAN:

Q. You have asked the reporter to read back to you one of the questions. If you will be good enough, Mr. Maloney, to suggest which question it was, the reporter will be very happy to read it back to you, and you can qualify it in any way that you want.

A. Just admit—I withdraw the question.

* * * * * * * * *

(2193) Q. Mr. Maloney, were any reports made by you to the Executive Board regarding any of these matters that we have had under discussion here?

A. Well, I told you this morning I made a verbal report to the Executive Board about the situation here in Philadelphia.

Q. You made no written reports?

A. No, I didn't make no written reports.

Q. Mr. Maloney, do you get reports from McDonald yet at this time?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. Yes, I think there is some come into the office. I never read any of them.

Q. Does he make reports of his activities regularly?

A. Not regularly, no.

Q. How frequently?

A. Whenever he feels like it, I guess.

Q. Where does Mr. McDonald live?

A. I don't know.

Q. You don't know what his home residence is?

A. I don't know what his home address is. I know he has got a home in New York, but I don't know his address.

(2194) Q. I meant, he lives in New York, New York City?

A. Well, that is where his home is, in New York, yes. That is where his wife and children live, yes.

Q. And right now since you invoked supervision he has been performing duties where?

A. He is on the West Coast.

Q. And what office is he working out of?

A. He don't work out of any particular office. Sometimes —Well, I can't tell you, Mr. Freedman, where he is at. All I can tell you, he is on the West Coast, where he is at, whether he is in Los Angeles, San Francisco, Phoenix, Arizona, Portland, Oregon, Seattle, or where he is.

Q. What area does he cover now?

A. He has taken the whole West Coast to himself, to go up and down it. What his address is, I don't know, but he has probably got an address in the General Office where the bookkeeper sends his pay to him.

Q. Where does she send his pay to him?

A. I don't know. I say he has probably got one there. That is foreign to me. I wouldn't know it. He probably changes it every week. But I am sure if you want it you could call up and get it over the phone.

Q. Who does he make his reports to, you?

A. I think they are generally addressed to me, yes.

(2195) Q. Have you been in touch with him at all?

A. A month or two ago he asked me permission—He alled me up and said his mother had a stroke in New York. He wanted to go home to New York.

Q. Did you give him permission?

A. I told him to go ahead, if he wanted to go. He was in Salt Lake City at that time.

Q. Mr. Maloney, prior to the time you invoked supervision did you engage anyone or have anyone make an investigation of Local 542, or into the affairs of Local 542?

A. I don't think I did. I would say no. Not my recollection. I didn't hire anybody.

Q. Do you know whether anyone from your office did?

A. No, I don't believe they did.

Q. Do you know whether any investigation was made?

A. Not that I know of.

Q. Mr. Maloney, you testified yesterday that while you were in Atlantic City you had a conversation with one of the representatives of one of the other crafts; was it the carpenters? About the other trades going out if the engineers remained on strike. Wouldn't work with them.

A. I don't think that I made a statement as you made it. I think that what I am trying to—I think your question is a little bit off, but that is all right, I will answer it.

* * * * * * * * *

(2196) Q. In answering it, Mr. Maloney, all I was going to say to you was, before these gentlemen got so hot and bothered, will you please identify the gentleman's name and go ahead and tell your story.

MR. THOMAS: Please answer the question he asked you first.

THE WITNESS: The question he asked me was—I

am trying to find out from Mr. Freedman—I was going to ask the question myself, and Mr. Freedman told me to ask the question: Do you mean before they went out or after they went out?

BY MR. FREEDMAN:

Q. Before who went out?

A. Before the Building Trades Council went out, or after they went out—after they—We will say after they voted to strike, or after they did strike? I am only trying to get the question clear in my mind, Mr. Freedman.

Q. Mr. Maloney, you testified yesterday about a conversation that you had with a gentleman in the course of the (2197) Atlantic City proceedings. Do you remember you gave some testimony about that?

A. I said that it was common knowledge around, the question about the ——

Q. And you say you talked to one man particularly about it. Do you remember?

A. Yes.

Q. Who was that gentleman?

A. Well, I told you yesterday I didn't know what gentleman it was, but I said he was a carpenter. And I have been thinking over last night, and I think the carpenter was the president of the Carpenters. That is my knowledge now. Mr. Hutcheson, I think it was Mr. Hutcheson that I talked to, and that is not a positive statement. That is my opinion after thinking that answer over since last night.

Q. Now, what I want to know is what he told you.

A. He told me that the carpenters were on a strike against the engineers in Philadelphia.

Q. Now, did you ——

A. That information was conveyed to him by somebody in Philadelphia, and he didn't say who.

Q. Did you tell him ——

A. If I am talking, thinking of the right man now.

Q. Now, what was your answer to him when he said that?

(2198) A. There wasn't anything I could say at all.

Q. Didn't you reply to him at all?

A. Outside of the fact that I was sorry that this happened. As I told you yesterday, I was ashamed of the whole damned thing. There wasn't much I could say.

Q. Is that what you told him?

A. I told him I was a little disgusted with the whole situation.

Q. Didn't you make it clear to him that you were going to stand up for your engineers?

A. Why, everybody knows that that knows Maloney. I don't have to make that clear to anybody.

Q. Why didn't you make it clear to him?

A. Why should I make it clear to him? He has known me for years, and he knows it is my policy. You don't keep repeating your policy every time you see a fellow, you know.

Q. So you told him you were just disgusted with the whole thing?

A. That's right, or words to that effect. I don't know whether I used the word "disgusted" or not.

Q. Mr. Maloney, do you recall the time when Underwood was trying to organize the Turnpike—the contractors who were working on the Turnpike?

A. Very well.

(2199) Q. Do you recall a contractor by the name of Harrison?

A. I know that is the name of one of the contractors, yes.

Q. Do you recall that they had quite a bit of trouble with the Harrison job, in organizing his job?

A. You know who organized it, don't you?

Q. I asked you. Please answer the question.

A. Yes, I know a whole lot about it. I will tell you who organized it, too, if you want to know.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. You will get a chance to say what you want to say.

A. O. K., all right.

Q. Do you recall that Local 542 were picketing Harrison in an attempt to organize him?

A. That is a possibility that they were picketing Harrison, yes.

Q. And do you recall that Hunter Wharton's men were coming in from Local 66 and working on the job, going through the picket lines?

A. That is a possibility.

Q. You know that is true, don't you? That was reported to you?

A. It probably was. I said it is a possibility.

Q. It was reported to you.

A. Who reported it to me?

Q. I am asking you. Wasn't it reported to you?

(2200) A. I don't know. I say that is a possibility. If you say it was, I will take it, yes, sir.

Q. I say, wasn't it reported to you?

A. I am not sure. I am trying to tell you.

Q. And at that time didn't McDonald protest to you about Hunter Wharton's failure to cooperate in that strike?

A. I would like to call to your attention, Mr. Freedman, that Hunter Wharton wasn't in Pittsburgh at that time, and it wasn't his men. He was in my General Office and represented me as an assistant to me, and he didn't represent the Pittsburgh Local at that time, so they couldn't have been his men.

Q. Are you sure?

A. Pretty near positive of that.

Q. Didn't you read Mr. McDonald's reports to you concerning that situation?

A. I read a lot of reports. I would say maybe I did. But I want to call to your attention that after this eastern—this Turnpike was going non-union, it was through the effort of me, after being reported to me that there were

non-union and there was nothing being done about it around this territory—at least, I felt there was nothing being done about it, that I got the rest of the General Presidents that was involved in there—the laborers and carpenters and (2201) ironworkers—I believe, I am not sure about the ironworker—at a meeting at the A. F. of L. convention in St. Paul, and there was no representative of 542 there at the time. And I was able to convince them fellows that we needed some help, and the only way we could do it was to stop the jobs in other parts of the United States. And we didn't really stop the jobs, because it was a violation of the Taft-Hartley Law, but we conveyed the information to the men, and the men refused to go to work. Not only the carpenters in New York—the jobs the men refused to work in certain parts of New York, certain ports of Ohio, certain other parts of the country, including Illinois and Minnesota —to try to convince these contractors that they wasn't going to work Union in one part of the country and non-Union in the other. And that was instrumental in straightening the job out, as much as we could, and we incidentally got into a lawsuit over that, too. A gentleman from Baltimore—he had a job in Baltimore ——

Q. Are you all through?

A. Yes.

Q. Don't you remember your progress reports that were sent to you weekly by Mr. McDonald concerning that?

A. No, I don't remember them at all.

Q. Don't you remember that it wasn't until after McDonald protested to you to compel Wharton to take his men out of (2202) there that Harrison finally signed up?

A. I told you that Wharton didn't have his men in there. He was working for me as assistant. It wasn't Wharton's men. If you are going to keep on using the word Wharton for some other motive, he wasn't in Pittsburgh.

Q. You better read your progress reports, the ones that you gave to me, Mr. Maloney.

A. I haven't read them yet. I don't memorize them. You show them to me and see what is says.

Q. I am just relying on your recollection.

A. My recollection is nil on that.

Q. The progress reports will be presented to the Court.

A. All right. I will have a chance to read them in court, won't I?

Q. That's right. You have got possession of them. You can read them before you go into court. I would suggest that you do.

* * * * * * * * *

BY MR. FREEDMAN:

Q. Mr. Maloney, one of the demands which the Local had been pressing in connection with that strike—for which they were on strike, was that they wanted, so far as wages were concerned, parity with New Jersey. Do you remember that?

A. That come in long after the strike started. That come (2203) in as a final suggestion from Mr. Underwood. There never was nothing said about that in Chicago at all.

Q. Do you object to that?

A. No, I don't object to it. I don't object to it even today, if it could be done, but that was put in after everything else was discussed.

Q. Did you see the rider that was prepared before Mr. Underwood went to Chicago?

A. No, I didn't. There was no rider at that time presented to me, and I didn't read any.

Q. Then you don't know what the demands were that were presented?

A. I know that the demands he was telling me ——

Q. You can't answer my question until you hear the question. Then you don't know what the demands were

that were presented prior to Mr. Underwood's coming to Chicago, since you didn't even look at the rider?

A. All I knew is what Mr. Underwood showed me, and he didn't show me anything like that.

Q. However, you did learn about the demand at one time or another, for parity with New Jersey?

A. Afterwards, yes.

Q. And what was your reaction then?

A. My reaction was if it could be accomplished, I would be (2204) glad to do, but after 115 days strike, or whatever it was—I don't know whether it was 101 or 2 or 15—somewheres over three months—you said yourself yesterday—why, I thought it was bad grace to try to inject that at the last minute.

Q. So you refused to?

A. I didn't refuse to do anything. I said I thought it was bad grace to put it in.

Q. What did you do about it?

A. I didn't do anything about it.

Q. Did you press that demand?

A. I didn't press the demand. If the Arbitration wanted to press it, it was all right with me.

Q. Weren't you in control of the Arbitration?

A. Only the fact that the matter, the demand, was trying down there—He had a committee, and don't forget that we asked Mr. Underwood to go on the Arbitration Board and he refused.

Q. Without any authority.

A. What do you mean, without any authority? Any member of a committee has got as much to say as anybody else.

Q. Don't pretend to be so naive.

A. I ain't pretending to be naive at all, but I am telling you that anybody on a committee ——

(2205) A. I want you to know, Mr. Freedman ——

Q. Yes?

A. —that my talking loud to you is not no insulting like.

or any shape, manner or form. It is just a habit of mine that I have a hard time controlling.

Q. Just so that I am clear on this, Mr. Maloney, did you participate in any of the conferences preparatory to the arbitration?

A. Not any, and I answered that yesterday for you.

Q. Mr. Maloney, you knew that there was friction between Wharton and Local 542, didn't you? There had been a great deal of bad feeling between them?

A. I wouldn't say there were friction, Mr. Freedman.

Q. Weren't you ever advised that there was a lot of strong feeling against Mr. Wharton in Local 542 because of certain actions of his in the past, particularly ——

A. I heard, it seems to me, it runs through my mind, that somebody might have said that to me, but I don't think it was very serious. There is always—With adjoining Locals there is always more or less some kind of misunderstanding between the two Locals that adjoin one another.

(2206) Q. Mr. Maloney, the International Union has always advocated a strong safety code, hasn't it?

A. A strong what?

Q. Safety code. Shall I repeat the question?

A. Oh, yes, yes. I have always tried to get—I wouldn't say—a universal safety code for the membership, yes.

Q. A strong one with teeth in it?

A. Not the kind of teeth that Mr. Underwood was trying to put in it.

Q. Well, what kind of teeth would you want to put in?

A. Just the regular—have agreement with the contractor that he would insist on having a safety and certain men could handle it. And we have made—We write articles on safety code. In fact, we got honorable mention of the Safety Engineers, or got honorable mention—I don't know whether it was individual or not, at a safety meeting for our efforts for to try to make a construction job safety—safe on the construction job.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Are you familiar with the provision in the safety code in the present contract ——

A. No, I am not.

Q. Or with the—Haven't you read the contract?

A. No.

Q. The present contract?

(2207) A. No.

Q. When were you last elected, Mr. Maloney?

A. I was elected last year.

Q. What was the date?

A. Well, the Convention nominated me in April, and I think the referendum vote was in June or July, the first part of July, or last part of June. I would have to look up the date to find it for you.

Q. You were nominated first in the convention?

A. Yes, that's right.

Q. Was there any opposition to you?

A. No, sir.

Q. What does the Constitution provide for so far as elections are concerned?

A. In what way?

Q. Particularly with respect to the office of president and vice-presidents and general secretary-treasurer.

A. Nominated in convention, a referendum vote.

Q. Will you explain to me how that referendum vote is conducted?

A. We send little slips out to the Local Unions and they send us back the returns, what the vote is, and we take their word for it and print it in the Journal.

Q. Don't you count them in the main office, your votes?

(2208) A. No, sir. What we count in the main office is the votes that the International—I mean, that the Local Union sent to the International office. Then we count them and list them in the Journal.

Q. In other words, you only get a statement from the Local to the effect that so many men voted for the president?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. That's right, that is it. We take the statement of the Local. That is, 542 done the same thing.

Q. And is that what you call a referendum vote?

A. That is a referendum vote.

Q. Do you know whether ballots went out to each individual member?

A. They are supposed to.

Q. Do you know whether they did?

A. That is up to the Local Union—responsibility up to the Local Union.

Q. Wasn't there supposed to be someone appointed on the National level to conduct these elections and to count the ballots?

A. No, sir. Yes, there is a committee appointed to count the ballots after they are all sent in. They are all sent in and addressed to a mail box or some particular spot with a sealed envelope, and we appoint three tellers from different parts of the country. We generally try to get one from (2209) the East, one from the West, and one from the central part of the United States, and they come in and open the envelopes and count the ballots. The ballots every individual Local Union is sent in.

Q. If a Local Union simply sends in a statement stating how many voted for ——

A. That is the only thing they are supposed to do. They are supposed to count the ballots and send the statement in.

Q. They are supposed to count the ballots and send the statement in?

A. They keep the ballots themselves.

Q. The International Union doesn't do any counting of ballots?

A. No, sir. We have faith in our Local Unions.

Q. Are you able to state of your own knowledge that ballots went out to each individual member?

A. I can t do that because I just said that the Local Union sends them out. Would you answer me a question if I asked you?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. I am afraid I am not on the stand now, Mr. Maloney, and you are.

A. That is the reason I asked you a question.

Q. This is a discovery ——

A. I didn't want to ask you without getting your permission.

(2210) Q. If you want to make clear anything that you have said, you have a perfect right to do so, and go ahead.

A. You told me, anything I want to know, to just ask you, and I thought I would ask you.

Q. I said if any question is not clear to you, and I repeat that. That is what I said to you. Then you don't know who counted the ballots, if anybody?

A. What do you mean, count them?

Q. So far as the elections of your officers are concerned.

A. Why, certainly, we appointed a committee, I told you, to count the ballots.

Q. Who was the committee?

A. I would have to look that up for you. I don't know who I appointed.

Q. I would like to have that information.

A. That is all right. You will get it. It is a matter of record. I think you will find the Journal—It is printed in the Journal. The following Journal after the election, and every Local that sent in their ballots, how many voted for and against, and how many didn't vote.

Q. What I want to know is who was the committee who was elected to count the ballots.

A. We will give you the names. It is in the Journal with the report, the committee's report. That went out to every (2211) member in the United States that we got the address that belongs to our International Union.

Q. Who appointed that committee?

A. I did.

Q. And you don't remember who was on it?

A. No, I don't remember right now, no.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. Wasn't there supposed to be some other agency, such as a firm of accountants, or some other outside agency to assist?

A. No, sir. We have our own accountant that checks the records and he works with the committee. He certifies that the Local Union—he certified they are paid up in their dues, and their members are entitled to vote.

Q. You said something yesterday about Mr. Underwood being illegally elected for a period of four years to office. When did you first find out about it?

A. When it was brought to my attention.

Q. When?

A. Oh, I think since this dispute started.

Q. And that would be when? Can you roughly place it?

A. Say a year or so ago.

Q. About a year ago?

A. About a year or so ago, yes. Maybe 14 months, maybe 13 months.

Q. Didn't you know about it at the time it occurred?

(2212) A. No, I didn't.

Q. Weren't you kept advised of the progress of the elections?

A. No, I wasn't. Not for the four years. I knew he was elected, but I didn't—I thought he was complying with the Constitution.

Q. Weren't you getting reports?

A. I knew he was elected, yes.

Q. I mean reports of the elections?

A. I suppose they come in to the office, yes. They come into the office every year, but that don't necessarily mean I see them.

Q. Weren't you getting McDonald's reports? Didn't he report to you on that?

A. I don't know whether he did or not. I told you yesterday I didn't waste much time reading McDonald's reports.

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Q. There has been bad blood between McDonald and Wharton, hasn't there, Mr. Maloney?

A. I don't say there is.

Q. Sir?

A. I don't say there is, no.

Q. You mean there has never been any friction between them?

A. Oh, I don't think they sleep together or anything like that. There is always friction between—more or less in a (2213) business sense, but I don't think personally there is any. I think that question—Whoever gave you that information gave you wrong, when I realize back here before Wharton was in to my office that McDonald was trying to promote him for one of the vice-presidencies of our organization, so there couldn't have been much friction if he was trying to promote him.

Q. When did he try to promote him?

A. Oh, before he come into my office as vice-president—I mean as assistant. I would say maybe roughly seven or eight years ago.

Q. Seven or eight years ago?

A. Yes.

Q. Did you ever have any conversation with Mr. Cox of the Construction Industries Stabilization Commission regarding the affairs of Local 542?

A. Never. I didn't have any with him.

Q. Do you know the gentleman?

A. Yes, I do.

Q. Did you ever have any communication from him?

A. Yes.

Q. What was the nature of it?

A. Well, I think it was a—some kind of a memorandum or something, I am not sure whether it was a letter, memorandum or something. I didn't pay much attention to him. He said (2214) that he had received some letter from Underwood, and that Underwood threatened to take it up to the

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

Department of Labor and he wanted to know—he had been asked to come in here and I think to help settle this dispute. That was the 1950 dispute.

Q. Who asked him, do you know?

A. I don't know; he didn't say.

Q. How did he happen to get into the picture then?

A. He said somebody asked me to come in. He poses—and I guess he is—he belongs to the—The arbiters of this country, incidentally, have got an association, and I think he is one of the arbiters of the association, and I think that somebody solicited him. Whether it was the contractor or whether it was the public or whether it was the Union, I don't know. And I don't even know what he did down here, either. All I know is he said he got a letter.

Q. Was it your office who solicited him?

A. Oh, no, no, no, no. Not me, anyway. Or on no orders of mine, either.

Q. Was there anybody in your office who was very friendly to him?

A. Yes. There is a Mr. Hill in my office knew him very well. They used to go to college together. They are both graduates of Harvard.

Q. Do you know whether Mr. Hill invited him in to the

(2215) A. I don't know, no. And I think if I am not mistaken, I think that Mr. Taylor down here is in the same group, and Mr. Dunlop, they all seem to be pretty well friendly with one another.

Q. Dr. Taylor didn't come in until he was invited.

A. Well, I am not saying the other fellow come in without being invited, either, because I don't know. I know that I didn't invite him or nobody in my office, to my knowledge, with my consent, invited him, either, or direction.

Q. Mr. Maloney, after the strike was over and after the men had returned to work, you still continued to collect strike assessments from the membership, didn't you?

Deposition of William E. Maloney as on Cross-examination, Offered by Plaintiff

A. That question was brought to me by Underwood —I mean by Mr. Wharton, and Mr. Wharton raised the contention that a certain part of the Local Union had paid strike benefits into the organization while the strike was going on, and that there were certain members of this—I guess you will have to ask Wharton. I am only giving you an impression of what I think.. And some of the members of the Executive Board, or the Advisory Board, if you want to call it that, in Local 542 raised the question, just because the other fellows hadn't paid the strike benefits, and the fellows had actually paid the strike benefit and put them up to date, and the other ones were delinquent, he wanted to know if he thought from me (2216) it was proper to do it. And I thought if the Local Union had a certain percentage of the Union to keep the strike going on to pay it, I thought it was no more fair than the others were to pay it, too. And, of course, the money went into the Local Union, and I believe on that assumption, I think that the Advisory Board and Wharton—you can ask him this yourself—decided then for to collect the arrearage of those that hadn't paid.

Q. How much did you collect, do you know?

A. I don't know.

Q. Since you took office, would you say you collected about 77 thousand dollars in your Defense Fund—for that Defense Fund, or Strike Fund, since you invoked supervision?

A. 542?

Q. No, since you invoked supervision here, would you say you collected in excess of 70 thousand dollars for that Strike Fund?

A. What do you mean by Defense Fund?

Q. Strike Fund, strike assessments.

A. I think that is outrageous, that figure.

Q. You think it is way out of line?

A. Yes. I am only telling you—I don't know, but I think it is ten times, maybe twenty times the amount they collected. That is my opinion.

(2217) Q. Have you been keeping track of it?

A. No, I haven't, but the records will show it. I don't think they got 77 thousand dollars in the treasury.

Q. Yes, your own records will show it, Mr. Maloney.

A. All right. That is all right. You asked my opinion and I told you. I really think that is a dream of somebody's.

Q. Mr. Maloney, are you familiar with all of the various items set forth in the financial accounts that are sent to you by Mr. Wharton?

A. No, I am not.

Q. Can you identify the miscellaneous expenses which are set forth in those accounts?

A. No, I can't.

Q. Do you examine those accounts when you get them?

A. I generally turn them over to the auditor to have them checked.

Q. Don't you look at them yourself?

A. Very seldom, because they come in there when I am not there.

Q. Don't you make a point of making a spot check?

A. No, I don't. Once in a while.

Q. Don't you see any miscellaneous items?

A. They haven't been called to my attention very seriously, no. We have an auditor that goes over them things. That is (2218) his job. If there is anything unusual—not only 542, but any other Local—where the statements come in, and if anything unusual item, he generally gives me a note of it, and I can't remember yet of getting an unusual item from 542.

Q. Well, when you look at one of these accounts and you see a miscellaneous item, don't you question it yourself?

A. I might. If it is not out of line too far, I don't raise any question about it.

Q. And you say that you haven't noticed any miscellaneous expenses?

A. That's right, that's right.

Q. I suppose, then, if you are not familiar with it, there is no purpose to be served in asking you further questions about the various items that appear in those statements, is there?

A. I wouldn't say there was. There would be no advantage to you or I, either. Would you mind giving me a list of the items that you are talking about, and I will look them up when I get back.

Q. Well, I want to know what your present recollection is. I want to know what you have done in the past.

A. Took a lot of abuse because the Local Union wouldn't live up to the Constitution.

Q. Sir?

(2219) A. Took a lot of abuse because the Local Union wouldn't live up to the Constitution.

Q. Who took a lot of abuse?

A. I did.

Q. You don't look to me like you have been abused.

A. Well, that is your viewpoint.

Q. Mr. Maloney, the International sent out form letters from time to time to the Local membership, did it not?

A. Yes, it does. It does yet.

Q. Why aren't copies of those form letters in the files?

A. Should be in there.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

DEPOSITION OF VICTOR S. SWANSON.

(2221) VICTOR S. SWANSON, having been duly sworn, was examined and testified as follows:

BY MR. FREEDMAN:

Q. Mr. Swanson, do you have any records of any of the affairs relating to Local 542 or to Mr. Underwood's trial and charges?

A. If I have any records?

Q. Yes, sir.

A. Not except the record that might be in the magazines. I have no other records.

Q. Do you have any other correspondence from the main office, from Mr. Maloney, or anyone from the main office, regarding the trial of Mr. Underwood?

A. No, I have no record.

Q. And you have no records regarding the supervision which has been imposed?

A. I have not—no. I have no record.

Q. Did you make any records of your own in connection with the trial or the other affairs relating to 542 to assist (2222) you in your own decisions relating to the supervision of 542 and the trial of Mr. Underwood?

A. I made no records, but I was there.

Q. But you have no records?

A. I recollect, from my memory.

Q. Mr. Swanson, did you ever hear of any complaints against Mr. McDonald regarding his activities, his union activities, particularly during the period that he served in the jurisdiction of Local 542?

A. No, not that I can recall now.

Q. Did you ever hear of any criticism leveled against him by anyone?

A. No.

Q. You attended many Executive Committee Meetings with him during the period from 1947 to the latter part of 1952?

A. I attended them all, all the Executive meetings that were held.

Q. And Mr. McDonald also attended those meetings?

A. That is correct.

Q. And you are both members of the Executive Committee?

A. That's right.

Q. Executive Board, I guess you call it.

A. Executive Board.

Q. He attended them all, also, did you say?

(2223) A. Yes.

Q. And you engaged in discussions with him and with others during all of those meetings: general discussions about union activities?

A. That might be true, that we discussed union activities.

Q. How frequently would you hold the Executive Committee meetings?

A. Every three months.

Q. Did you have occasion to see him or the other officials of the Union any more frequently than that?

A. I had occasion to see McDonald quite often during the last year. He was here.

Q. You mean since he was transferred out of Local 542?

A. Yes, he has been in California now over a year.

Q. Now, prior to that time did you ever hear Mr. Maloney or anyone else complain about Mr. McDonald or the fashion in which he was carrying out his duties?

A. No, he never discussed that with me that I know of.

Q. And you never heard anybody criticize Mr. McDonald?

A. Not that I can recollect now, no.

Q. Was he recognized as a competent, conscientious officer of the Union?

A. So far as I know, he was.

Q. In your own dealings with him, did you find him as a (2224) conscientious, competent officer of the Union?

A. I would say yes. So far as I was concerned—what I know.

Q. So far as you know, he conducted himself in a satisfactory fashion in so far as his duties in Local 542 are concerned?

A. I did not know anything much about 542, but as far as I know, he did. As far as I know.

Q. Didn't you all have to make reports during the course of those meetings of your various activities?

A. I don't quite understand that question.

Q. Well, didn't the respective board members make reports and carry on discussions regarding their activities in the course of these Executive Board meetings?

A. I would say there was no reports made. They might have discussed it, say, in a meeting. Naturally, in a meeting they would discuss it.

Q. When I say reports, I mean discussions.

A. Report in writing?

Q. No, I mean oral report. Verbal discussion.

A. They might have done that, but I have no recollection of reporting anything in connection with Local—what is it 642.

* * * * * * * * *

(2227) Q. Mr. Swanson, will you state specifically what the duties of a general vice-president are?

* * * * * * * * *

A. Are you asking me the question?

Q. Yes, sir.

A. I would say that that could best be interpreted by the General President and the constitution.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. Well, you are a General Vice-President, are you not?

A. That is correct.

Q. You are also an officer ——

A. Of Local 3.

Q. —of Local 3 of the International Union of Operating Engineers?

A. That is correct.

Q. Would you be good enough to state what your duties are as a General Vice-President, please?

A. I don't exactly see what you mean, because the duties might be many, and they might be—first, if I can answer in my own interpretation?

Q. I wish you would answer in your own way, please.

A. I would say my duties as a Vice-President would be to (2228) look out for the interest of the members, to see that everything is taken care of properly so far as I can do it. My duties are practically the same as an officer of Local 3. I am looking out for Local 3 and see that everything is carried on properly and so forth. I think that probably the constitution would define it better, but that is the way I see it.

Q. If you were not an officer of the local, would your office of Vice-President, General Vice-President consist mostly of duties in the nature of observation rather than affirmative duties to conduct the business of a union?

A. If I was not an officer?

Q. Of the local.

A. Yes.

Q. In other words, if you were only a General Vice-President, would you be here in an observatorial capacity or in some other capacity?

A. Well, I would say that I would be here as an adviser and to assist locals in every way possible, to advance the interests of the International and so forth. That would be my interpretation of my duties.

Q. Are you assigned to this region as an International Vice-President?

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

A. Well, I am elected from the western, eleven western States, I presume. I could probably be considered assigned (2229) in one way. I am not directly assigned to any place. I suppose I could be assigned to any place in the United States as the President might choose, but at the present time I would say that I am assigned to this territory here.

Q. And the assignments depend on the President; only he can make them?

A. Well, I wouldn't say that only he can make them, but I think that probably the Executive Board could make it, but I think he is the directing head, and he probably would be the only man.

Q. Has anybody but the President ever made any assignments?

A. That I can't tell you.

Q. Do you know of any assignments made by anyone other than the President?

A. So far as the Vice-Presidents are concerned?

Q. Yes, sir.

A. No, I have no recollection of any.

Q. How long have you been in the Union, sir?

A. Well, I have been in about for y-six years, I think.

Q. How long have you been a General Vice-President?

A. Well, I came in as a trustee in 1943, I believe, and then three years afterwards, I believe, I was elected as a vice-president.

Q. Does a vice-president obtain a salary as such unless (2230) he is assigned?

A. As a vice-president?

Q. Yes, sir.

A. Yes.

* * * * * * * * *

(2231) Q. Isn't it true, Mr. Swanson, that the constitution makes no provision whatever for the compensation of vice-presidents?

A. That is not true.

Q. Do you have a constitution here?

A. I haven't got it on me; but I can get it. Maybe the attorney can provide me with one.

MR. FREEDMAN: I ask for a copy of the constitution, please.

MR. WOLFE: Don't you have it?

MR. FREEDMAN: I don't think I have any.

BY MR. FREEDMAN:

Q. Is this a copy of your latest constitution, or the latest copy of your constitution?

A. I would say it is. The color of the cover is like that.

Q. Will you examine it and see whether it is a copy of the constitution?

A. I see it is.

Q. Will you examine that constitution and indicate to me wherein the constitution provides for compensation for General Vice-Presidents. First of all, let me mark this (2232) Plaintiffs' Exhibit 1140.

* * * * * * * * *

(2233) Q. Now, you have stated, Mr. Swanson, that you are not going to read it between sessions and that you would read it during the sessions. Do you now state that you will not read it during the sessions?

A. You want me to read this to you?

Q. I want you to look at that constitution and tell me what provision you have reference to which makes provision for the compensation of the General Vice-Presidents.

A. I wonder if I may state that Mr. Freedman probably doesn't know that I only have one eye, and can see very poorly with that, and I am not going to sit here and strain that poor eye to read that small print. It would take me all day.

Q. No, sir, I wasn't aware you only had one eye, and let me say I do not want to impose any strain upon you. I want to extend every courtesy, but I have a job here to do, and being a General Vice-President, are you not reasonably familiar with the provisions of the constitution?

(2234) A. Well, I would say reasonably, yes, but we do not get in conflict very much here. We take it for granted. We have read it.

Q. Don't you operate on the basis of the constitution?

A. Oh, yes, yes, sure.

Q. Then aren't you required to know all of the provisions of the constitution?

A. I think as a whole I am, yes.

Q. Well, now, you should know pretty well ——

A. As a rule, I am.

* * * * * * * * *

(2237) Q. Mr. Swanson, isn't it true that no vice-president is entitled to receive any compensation unless Mr. Maloney sees fit to award such compensation to him by assigning duties?

A. I wouldn't say that.

Q. What would you say?

A. What question do you want to ask me? I don't understand your question.

Q. Well, I will try to break it down a little more.

A. I don't quite understand your question.

Q. Isn't it true that a General Vice-President is not entitled to receive any compensation unless he is assigned (2238) duties by the General President?

A. I don't think that is true.

Q. On what do you base that answer?

A. On the constitution.

Q. Well, I will again ask you to refer me to the section of the constitution on which you base your answer. Do you want to examine it?

A. I already answered the question as I see it.

Q. You haven't answered that question, Mr. Swanson.

A. I have answered in connection with the constitution.

Q. Well, what was your answer? I don't recall your having answered it.

A. Read the record. I told you about it before.

Q. You haven't referred to any provision in the constitution in support of your answer, have you?

A. Read it.

Q. Read what?

A. Read the record. You asked that question many times, haven't you?

Q. Yes, but you have never answered it.

A. Yes, I answered it.

Q. Do you mean to say that you have referred me to a specific provision in the constitution ——

A. I don't.

(2239) Q. —which supports your answer?

A. I referred you to the constitution.

Q. I ask you to refer me to a specific provision.

A. That would require some time to read, unless you adjourn so I can take a few hours off to read it.

Q. If we do adjourn later on—after we adjourn this deposition—will you examine the constitution and then answer the question?

A. Oh, yes.

Q. Will you do that?

A. I will be glad to do it.

Q. And will you answer the other questions, also?

A. I will be glad to read the constitution over agai

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. Very well. I will ask you to read the constitution after we adjourn, and point out to me the specific provision in the constitution upon which you rely for that answer. I will hand you the constitution now, Mr. Swanson, so that you may take it with you as soon as we adjourn, and then when you report back we can then get your answer.

A. What adjournment do you refer to? Today or next week?

Q. Today.

A. I already answered that question.

Q. You mean you refuse to do it today?

A. I will do it as soon as I can.

(2240) Q. Well, what prevents you from doing it today?

A. I don't know. I have examined that once.

Q. Will you do it tomorrow?

A. I will do it if you stay here long enough, yes.

Q. What do you mean by long enough?

A. Until I have opportunity to read it.

Q. Can you tell me whether it is a day or two days?

A. No. I don't know. It should be within two or three days. I should have opportune time to read it. I don't understand these questions at all.

Q. Would you want to—I see you are examining the constitution. I would be very happy to wait ——

A. For your information, I can't see with these glasses to read, and I have to have other glasses, and I have to be very particular with the light. I have other glasses here that I have, and then I have a certain light. It is unfortunate, but that is my position.

Q. Well, I certainly don't want to burden you in any way, Mr. Swanson. I would like you to be able to do it at a time which is convenient for you and most comfortable for you, and if you tell me when that is, I will be very happy to accommodate you.

A. I will do it the first opportunity I have, as soon as I can.

(2241) Q. Do you have any other duties which are pressing now which prevent you from doing it?

A. Oh, I have my duties, but I will do the best I can.

Q. You understand, Mr. Swanson, that you are now required to testify in this proceeding, and that you must remain until your testimony is finished. Now, I want to accommodate you in every way, but I do want you to get this done reasonably soon. Now, if you want to adjourn after a period of time, as I said, I would be very happy to let you go where you want, and you can report back, and then we can continue with your testimony on those points that we have not got your answer at this time.

Now, I think you stated that you did attend numerous Executive Board meetings which were also attended by John McDonald.

A. Correct.

Q. Do you recall the oral report, verbal report, or any other kind of report that he might have made regarding the affairs of Local 542?

A. I have no recollection of any at this time.

Q. Do you recall whether he said that they were being very well conducted, or do you recall any criticism that he might have made regarding the manner in which the affairs of Local 542 were being conducted?

(2242) A. I have no recollection of that.

Q. I assume you were familiar with the strike which was carried on by Local 542, and which started on May 1, 1952?

A. I am not familiar with it.

Q. You never heard of it?

A. I have heard of it, yes. I have heard of it, but I am not familiar with what took place.

Q. Were you told at any time that there was a strike which persisted for a period of about three months?

A. I have been told, yes.

Q. Were you told the basis for the strike?

A. I don't recollect. I heard about numerous places there is a strike. I heard that there was a strike going on there, but I have no detailed information whatsoever.

Q. Where did you hear about it?

A. Well, I can't tell you exactly now. I probably read it in the paper.

Q. I see. Didn't you hear about it at any Board meetings?

A. Not except during the hearing, I might have heard it, during the trial.

Q. Other than that, you had no knowledge of it?

A. I have no memory of anything now here. I can't recall any at this time.

Q. Well, now, so far as the trial is concerned, do you (2243) have any recollection of anything that was said regarding that strike?

A. Oh, I have certain recollections of what was said, but what do you want to know?

Q. I would like you to give us the benefit of your recollection.

A. Of what?

Q. Of what you know about that strike.

A. Oh, I don't think that I have any recollection.

Q. What you heard and who said it?

A. I can't answer that question, because I have no recollection of what took place in respect to the strike at that hearing. I might have heard people talk about it, but I don't remember what everybody tells me.

Q. Do you recall that that was a case where the employers communicated with Mr. Maloney, and Mr. Maloney interceded in the strike? Do you recall that?

A. I heard that, yes. I heard that statement, yes.

Q. From whom?

A. Oh, I don't know. It was general conversation of the Board, I guess, discussed it.

Q. Where and when?

A. Oh, I have no recollection on that.

Q. Did you know that toward the end of the strike Mr. (2244) McDonald had sent a letter attempting to arrange a meeting between the employers and the local?

A. No. I had nothing to do with that letter. I had no contact.

Q. Did you ever hear about that letter?

A. Offhand, I don't know whether I did or not. What letter are you referring to?

Q. A letter dated August 7, 1952 ——

A. No.

Q. —in which Mr. McDonald ——

A. No.

Q. —offered to the contractors to attempt to mediate their differences with the union.

A. I don't remember now of having read it or heard about it, except offhand. I don't know who just—something was said lately, perhaps. Is there a letter out?

Q. Yes. I am going to show it to you right now.

A. I didn't read it.

Q. I am going to read from—would you like to read it yourself, or would you rather I read it to you, sir?

A. No, I would rather have you read it because I can't see very good.

(2247) Q. Very well. I am going to read it from the bill of complaint in this case. It is attached as Exhibit C to the bill of complaint. It is a letter on the stationery of the International Union of Operating Engineers, John J. McDonald, Third General Vice-President. It is his stationery. And here is the substance of the letter. This was addressed to various employers:

MR. FREEDMAN: And then at this point the entire

letter is quoted. May I insert here in parentheses, sir, that it has been marked Plaintiff's Exhibit 46, so that we can identify it.

THE COURT: It may be copied from the deposition of Swanson, from pages 31 to 34 inclusive.

(The letter referred to, Exhibit P-46, as set forth on pages 31 to 34 of the Swanson deposition, reads as follows:)

"This letter is intended to bring about a termination of the work stoppage presently existing in the construction industry in so far as it concerns the operating engineers in this area.

"My investigation into this matter reveals that the Contractors who are members of your (2248) Association are completely confused and uninformed about what has been taking place in the way of settlement negotiations.

"The information received by your members from your negotiating committee is to the effect that it is impossible to do business with Mr. Underwood and that he will not honor an agreement once it is arrived at.

"I wish to state to you, without reservation, that this information is absolutely false and it apparently was submitted to your members in bad faith for the purpose of preventing any contract from being entered into between the parties.

"As the representative of the International Union in this area, I have followed this matter closely and carefully. From my own personal observation, I can state that Mr. Underwood has given unsparingly of his time and has exerted every effort to settle this dispute in the utmost good faith. What I have learned from the Contractors, who are members of your Association, indicates that they have not been given the correct information either about Mr. Underwood's actions, or about the suggestions which he has made in attempting to settle (2249) this dispute.

Deposition of Victor S. Swanson as on Cross-examination. Offered by Plaintiff

"Because of the extraordinary importance of this matter to you and to the individual Contractors who are members of your Association, I strongly recommend that your Board of Directors arrange to meet at the earliest possible moment with Mr. Underwood and his committee and you can then determine for yourselves whether the information you have received is correct.

"It may be of interest to you to know that Mr. Underwood has negotiated and consummated collective bargaining agreements with seven Associations throughout the jurisdiction of our Local Union without any work stoppage and in addition, has negotiated contracts with the Warner Company, Liberty Corporation, and the Negotiating Committee for Independent Contractors representing 160 Contractors in the Philadelphia area. The total number of Contractors bound by the contracts referred to well exceeds five hundred. The wage increases in the areas outside Philadelphia have now been approved by the Construction Industry Stabilization Commission and all these Contractors are proceeding with their construction without any interruption (2250) in work.

"It may be that your present representatives have failed to inform you of the true state of affairs, and if this is so it is extremely important that you take immediate steps to ascertain the true situation. It seems to me your own welfare demands that you find out for yourselves what has been taking place and the best way to find out is to meet face to face with Mr. Underwood and his Committee and determine what can actually be accomplished in the way of a settlement. I should think that we are all adult enough to put aside petty grievances and fears and meet this situation squarely.

"Should you desire it I would be pleased to sit in at such a conference between your Board of Directors and Mr. Underwood and his Committee and lend my good offices in attempting to work out a solution to this controversy.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

"If you feel that I can be of any service in this matter, please feel free to call me at the Broadway Hotel, Philadelphia, Telephone Number Rittenhouse 6-6800.

"Yours very truly, John J. McDonald, Third Vice-President."

* * * * * * * * *

(2251) Q. Was that letter ever brought to your attention?

A. I have no recollection of ever having heard the letter read before.

Q. You never heard it discussed or referred to?

A. No. I just say no. I have no recollection of that.

Q. Would you say that Mr. McDonald in writing that letter was properly and conscientiously carrying out his duties?

MR. WOLFE: Oh, well, that ——

THE WITNESS: I wouldn't be in a position to answer that question.

BY MR. FREEDMAN:

Q. Has not your General Executive Board been dis-
(2252) cussing the question of supervision which has been invoked over Local 542?

A. I have no recollection of it coming up at the Board. You refer to the Board meetings?

Q. Any of the Board meetings.

A. No, I can't remember it being discussed there.

* * * * * * * * *

THE WITNESS: I have no recollection of discussing it at the Board meeting.

Deposition of Victor S. Swanson as on Cross-examination. Offered by Plaintiff

BY MR. FREEDMAN:

Q. Hasn't the Board even been notified that Local 542 is under supervision?

A. Oh, that is part of the records. That becomes part of the records.

Q. Well, wasn't the Board advised of it officially?

A. No, the Board—the record shows that they were—went under International supervision.

Q. Isn't the Board consulted about those things?

A. Oh, they might be discussed—consulted. They have the information.

Q. Is the Board ever called upon to approve or disapprove the President's invoking supervision over any local?

A. It is reported to the Board. The President, as I (2253) see it, has the authority to do that, and then report his decisions to the Board in writing.

Q. Did he report to the Board in writing regarding supervision over Local 542?

A. Well, it is part of the records, of the minutes.

Q. Well, you are a member of the Board, aren't you?

A. That is what I think I am.

Q. Did you ever get any report from Mr. Maloney?

A. I get official reports, like everybody else gets. I think we have the regular reports here.

Q. What reports are they?

A. The official reports of the minutes.

Q. You have them here?

A. Oh, I think the attorney has them over there. We get them, and we can get them for you.

* * * * * * * * *

(2256) Q. My question to you, Mr. Swanson, is did Mr. Maloney ever seek the approval of the General Executive Board in invoking supervision?

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

A. My answer would be no, that he reports his actions after it is taken place.

Q. In other words, he tells you about it—he reports, or someone reports, and the General Executive Board has no authority to act on it, is that correct?

A. They approve it. They could approve it.

Q. When do they approve it?

A. They would do it when they are in executive session.

Q. Did you approve of the supervision exercised over Local 542?

A. I don't believe. I don't know whether—I have no recollection that it came before the Board. It is only important cases. I don't know. I can't answer that question. I have no recollection of what happened.

Q. You don't know whether you approved or disapproved that, do you?

A. No, my answer would be I have no recollection. I don't remember at this time.

Q. Who made the report?

A. What report?

(2257) Q. About invoking supervision over Local 542.

A. I have no recollection who made the report. I just told you that, I have no recollection of the report being made.

Q. Do you have any recollection of ever having approved supervision over 542 in August of 1952?

A. It is quite a long while ago. I don't remember exactly who made the report. I presume the President made it, but I have no recollection of that. That is years ago.

Q. Well, that is only one year ago, a little over a year ago when supervision was invoked. Do you recall whether his invoking supervision was actually submitted to the Board thereafter?

A. I don't remember whether it was or not. I can't say right now.

Q. Well, now, when the Board's consent or approval is

sought, what do you do as a member of the Board so far as making yourself familiar with the facts is concerned?

A. What is your question?

MR. FREEDMAN: Repeat it, please.

(The question was repeated by the reporter.)

THE WITNESS: Well, I seek out all information that is available, and then I—you want to know (2258) how I vote on it, is that it?

BY MR. FREEDMAN:

Q. That's right.

A. Well, I vote for them to what the evidence presented when I voted on it.

Q. What evidence is presented?

A. I tell you that I haven't any recollection of this thing taking place.

Q. Is all the evidence which is presented contained in the minutes?

A. Some of them do, I suppose. The minutes are there, aren't they?

Q. Aren't the minutes supposed to reflect the entire record on the basis of which the Board acts?

A. Oh, I suppose so. The minutes speaks for themselves, I guess.

Q. Do you ever act on information which is not contained in the minutes?

A. I act on whatever information that I get, and then I use my own judgment.

Q. Do you ever disapprove any of Mr. Maloney's actions?

A. I don't think I had any occasion to do it, as far as I remember.

(2259) Q. How many locals are presently under supervision?

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

A. That, I would have to look in the records. Not very many any more. Most of them have been released.

Q. How many were there, would you say?

A. Well, I have other matters to do than to look into that, but there is at the present time only a few, by my information.

Q. How many, would you say?

A. Sir?

Q. How many, would you say?

A. How many would I say?

Q. Yes.

A. I would say—I wouldn't say over eight or ten. That is a guess.

Q. Do you know which ones they are?

A. Sir?

Q. Do you know which ones they are?

A. Well, no. I know those that have been released recently.

Q. Which ones were released recently?

A. Well, there is Local 302, Local 12.

Q. Will you identify it by place, too.

A. Well, 12 is Los Angeles, and 302 is in Seattle. 370 (2260) is in Spokane. Those are very large locals.

Q. How long ago were they released?

A. Well, just recently. 12 has been released for some time, a year and a half. The others have just now been released.

Q. There was court action involved in No. 12's release, wasn't there?

A. Well, I don't know whether the court action had anything to do about releasing that local. I think they had some court actions down there, probably, but it was not in connection ——

Q. The court action was in connection with supervision, wasn't it?

A. Well, not as I understand it. There is certainly no court action in Local 302 or in 370.

Q. And when were they released?

A. Sir?

Q. When were they released?

A. Well, they have been released now probably for three or four months, something like that. They are now writing the constitution and having the bylaws and having their election.

Q. What other locals have been released?

(2261) A. There is some stationaries—I am not altogether familiar with their being released. Local 39 was released.

Q. Where is 39?

A. About a year ago.

Q. Where is 39?

A. That is in San Francisco, stationary local. I think they have all been released that the members decided they wanted to be released. That is my opinion. I am more familiar in the eleven western states than I am with the East. I seldom get much information.

Q. When you say the members show a desire to be released, what do you do, conduct an election?

A. They conduct an election when ——

Q. Where do they conduct the election?

A. The local.

Q. I mean where? In what area did they conduct an election?

A. In whatever area the local is located.

Q. Are you talking about these locals that have been released?

A. They conducted an election in Los Angeles, 12, and Seattle, 302, and Spokane, 370, and in San Francisco, 390, right in this very building here.

(2262) Q. Do you know that the locals were granted the right to have such an election?

A. That they have no right?

Q. That they were granted the right to have such an election?

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

A. Well, upon request from the General President, they have been granted that. When there is sufficient number express themselves as desirous of having local autonomy.

Q. What is a sufficient number?

A. I don't think any local that I know of that is under supervision that want to be released—at least the western States.

Q. What are the locals which are under your supervision?

A. That are under supervision?

Q. Yes.

A. What are they?

Q. Which locals are under supervision?

A. I am not familiar with the record in the East.

Q. All over the Country.

A. Well, you will have to go through the records. I don't have the East. I don't devote any time to that at all. I have enough in the West to do—more than I can do. I think that the record would show. I am sure that (2263) attorneys here would furnish you with that information, if you desire, so I can't do it. I can get it for you.

Q. You have to vote on that problem, don't you, Mr. Swanson?

A. Vote on what? The members vote on it.

Q. You vote on every one of these problems that come up before the Executive Board?

A. Yes, but the members vote on whether they want local autonomy or not.

Q. But I am talking now about invoking supervision.

A. Invoking supervision?

Q. Yes.

A. Well, if I know anything about it?

Q. My question to you was, you are sometimes asked to give your approval to the General President's action, is that right?

A. Not necessarily to invoke supervision. If he finds it necessary, he has the power to do that.

Q. You mean he never asked the approval of the Board at all, then?

A. I didn't say he never, but he has the power.

Q. Has he asked the Board?

A. He often might have discussed it, yes, with the Board. (2264) He only invoked supervision when he is forced to do it. And he released them when the membership wants it released—sufficient number of membership want it released. That has been his policy now for some time, for a long time.

Q. Do you think he was forced to do it in Local 542?

A. I am not familiar with 542.

Q. It is part of your Union, isn't it? You are a General Vice-President.

A. Yes.

BY MR. FREEDMAN:

Q. Don't you deem it your business to make inquiry about these matters?

A. I have so much business in the West here that I don't go far East, for your information. I am amply—my time is taken up right here.

BY MR. FREEDMAN:

(2265) Q. Mr. Swanson, what is your compensation from the Union?

MR. THOMAS: I object to that, and I instruct the witness that he is not under the necessity of answering that if he does not wish to.

THE WITNESS: That is—I don't think it has any bearing on this case whatsoever.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

BY MR. FREEDMAN:

Q. Do you refuse to answer?

A. On the advice of the attorney. Not necessary.

Q. You refuse to answer?

A. The answer is no. Or, rather, it is yes to your question, if that is what you want to know.

Q. Mr. Swanson, do you get a separate salary as an International Vice-President in addition to your salary as an officer of Local 3?

A. Yes, that is correct. The answer is yes.

* * * * * * * * *

(2266) Q. Your answer, please?

A. My answer is the same as the first question, that I don't think it has any bearing on this case.

Q. You mean you refuse to answer?

A. I mean just what I said.

Q. Do you get any expenses from the International Union?

MR. THOMAS: The same objection and the same instruction to the witness, advising him that it has nothing to do with this lawsuit, and he need not answer it if he does not care to.

(2267) THE WITNESS. My answer is the same as to the former.

BY MR. FREEDMAN:

Q. You mean you refuse to answer?

A. I guess that is what it says there. I don't know.

Q. Who fixed the salary as an International officer—who fixes your salary as an International officer?

A. The Executive Board.

Q. When?

A. Did you ask me?

Q. Yes. When was it so fixed?

A. Oh, if you go to the record you will find it. I don't recall now exactly.

Q. Isn't it the President?

A. Sir?

Q. Isn't it the President?

* * * * * * *

THE WITNESS: I don't even know who fixes the salary. ——

* * * * * * * *

Q. Didn't the President fix the compensation?

A. The Executive Board fixed the compensation.

Q. Did the President fix it?

(2268) A. I told you, the Executive Board fixed it.

Q. You say the President had no control or authority over it?

A. I am not talking about the President. I am saying that the salary is set by the Executive Board.

Q. I am asking you about the President. Doesn't he have control over that?

A. I don't know whether he has. I don't think so. I think the Executive Board has the control.

Q. When did the Executive Board take action to give the General Vice-Presidents a salary?

A. I think you have to go back to the records. I don't remember those dates. I have no recollection of dates. The record shows it, if you go through the record.

Q. Did you vote on it yourself?

A. I did.

Q. When?

A. Well, you would have to go back on the record and see when that took place.

Q. Can't you tell me when it was?

A. No, I don't remember.

Q. Was it a year ago, five years ago?

A. Oh, it is more than a year ago, I know that. How (2269) much more it is, I don't know.

Q. Was it two years ago?

A. I don't remember.

Q. Do you remember the incident?

A. Well, I remember the constitution provides that the Executive Board has to set the rate.

Q. Well, then, I have to ask you again, can you refer me to the provision of the constitution?

A. I will find it in there when I look it over.

Q. Aren't the members of the Executive Board subject to the control of the President?

A. What do you mean, control? I don't understand the word "control" exactly. Will you define that so that I.——

Q. You mean you don't know what control means?

A. But there is so many controls. What is the control that you refer to in this instance? And I will answer the question. Control over my life or control over what I do?

Q. Over your activities, over your union activities.

A. I should say—I would say that he is at the head of the organization and the directing officer, yes. As the General President, the constitution provides for.

Q. And he can assign or refuse to assign you duties, can't he?

(2270) A. To a vice-president?

Q. That's right.

A. Well, I would say yes on that, he can or he can't.

Q. And he can also make provision for compensation or for the compensation cut-off for vice-presidents?

A. My answer is no.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. Even if a vice-president has no duties, is not assigned to any duties?

A. A vice-president always has duties.

Q. Suppose he is not assigned duties by the General President?

A. He still would have duties ——

Q. What?

A. —as a vice-president.

Q. What duties?

A. Sir?

Q. What duties?

A. As a vice-president. The constitution gives them certain powers and jurisdiction and so forth. It is—all that is in the constitution.

Q. Are you able to state now what locals are under supervision?

A. No, I am not, right offhand. I would have to look into the record.

(2271) Q. How many can you remember?

A. How many are under supervision?

Q. That's right.

A. Well, I wouldn't want to guess at that. I would rather get the exact number. I think that the attorney can supply you with that.

Q. Well, I am asking you for your best recollection.

A. That is difficult for me, because so many have been released the last year. They have voted to get out of supervision. If you refer to the eleven western States, I can answer your questions.

Q. So you can't identify ——

A. Try to.

Q. You know that Local 542 is under supervision, don't you?

A. Well, I understand that that is—yes. My answer is yes.

Q. Well, what other locals, do you know, are under supervision?

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

A. I am not in a position to tell you right now, but if it is of any importance we certainly can get that information for you without any trouble.

Q. I know, but I am asking you about your present recollection.

(2272) A. Well, I have no recollection. I wouldn't venture to guess at this time. So many have been released lately. If you talk about the West here, I can give you.

Q. Other than 542, you can't remember any other local being under supervision?

A. Oh, probably there is some more. I think there are some others, but I would rather have you get the exact figure. That can be gotten.

Q. Did you know William Carter, of the New Jersey local?

A. I did. He is dead now.

Q. Did you know him well?

A. Knew him very well.

Q. Was he an officer of the International Union?

A. No. He was an officer in Local 825 of New Jersey.

Q. Were you friendly with him?

A. Oh, yes. I am friendly with everybody.

Q. Were you in correspondence with Mr. Carter?

A. I have no recollection of ever receiving a leter from Mr. Carter.

Q. Did you ever hear him make any reports to the International?

A. Oh, I often met him at the meetings, at our various meetings.

Q. What meetings?

(2273) A. Sir?

Q. What meetings?

A. Oh, we had several meetings. I travel considerable and I met him in various places. I met him in New York. I met him in Boston.

Q. Carter, you mean?

Deposition of Victor S. Swanson as on Cross-examination. Offered by Plaintiff

A. Sir?

Q. Carter, are you talking about now?

A. Yes. I am talking about Carter. I met him in Florida.

Q. When were these meetings?

A. I don't recall those meetings. I just met him and talked to him.

Q. What was the occasion?

A. It might have been business. It might have been an Executive Board meeting. It might have been other meetings.

Q. Did he have any position in the International?

A. Not that I know of. He might have been—I don't know whether he had a position except that he was President, I think, and manager of Local 825, and he might have been assigned to certain jobs.

Q. That is the New Jersey local, isn't it?

A. New Jersey local, yes. That is all I know. Whether he had any other position or not, I am not familiar with that.

Q. And what was he doing at these meetings?

(2274) A. Oh, he attended the meetings; as an officer of his local he had matters come up, and so he attended the meetings.

Q. Are you talking about Executive Board meetings?

A. Yes. As a rule.

Q. Any other kind of meetings?

A. I don't recollect any other—I met him occasionally. You asked me if I knew him, and I knew him very well.

Q. Yes. Did you meet him at any other kind of meetings than Executive Board meetings?

A. I might have met him, but I don't recollect what it was all about.

Q. Did he attend all of the Executive Board meetings?

A. Whether it was all or not—he attended many of them, most of them. I would say most of them. He was generally always there. I met him at the convention in Seattle.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. On other occasions than the Executive Board meetings did you meet him and talk business?

A. No, we just talked probably everything but business.

Q. Did Mr. Maloney seem to rely on Mr. Carter?

A. Well, I can't answer that question. That is a matter for him to answer. I don't really know.

Q. I am asking you about your own knowledge.

(2275) A. Well, I think he relied on him, yes. I would say he did rely on him. So far as I know, he did.

Q. And that was in connection with matters generally?

A. Well, I can't speak for Maloney. I am just guessing. I think that he had a lot of confidence in Mr. Carter. He felt about him the same as I did, and so forth. That is all I can say in regards to that.

Q. Did you know Joe Fay?

A. Yes, I knew him.

Q. Did you know him when he was an officer of the Union?

A. I did.

Q. Were you friendly with him?

A. I was friendly with everybody. I have no enemies so far as I know. I don't specialize in making enemies. Everybody is my friend, unless they don't want to be. It has been my life, and I am going to stay with it.

Q. Fay did have a position as an International Vice President, didn't he?

A. At one time, yes.

Q. Until he went to jail?

A. Sir?

Q. Until he went to jail.

A. Well, yes. He was a vice-president once.

(2276) Q. Did he exert any substantial influence over the Executive Board?

A. Not since I came in. I never knew him to exert any influence over the Board. Probably did when he was in, but after he was off, why, he didn't exert any influence so far as I know. He is in jail.

Q. You mean since he got in jail?

A. Well, I don't know about that. So far as I know, I would say no.

Q. You mean while he was a member of the Board he exerted influence over the Board?

A. Well, he was a member of the Board. He was quite a prominent man on the Board, yes.

Q. Carter was one of his supporters, was he not?

A. Well, Carter was the President. He become President after he was out. That is ——

Q. After Fay left?

A. Well, there was somebody in there between. Sheehan, is that his name? And then when he passed away Mr. Carter was elevated.

Q. I asked you whether Carter was one of Joe Fay's supporters?

THE WITNESS: I can't answer that.

(2277) THE COURT: Mr. Wolfe asked, "Do you understand what he means by supporter?"

THE WITNESS: I understood him, I guess. I think I couldn't possibly answer that question. I am three or four thousand miles away from there, and I couldn't definitely answer that question in any way. I think they were friendly, yes, if that is what you want to know.

BY MR. FREEDMAN:

Q. Was Maloney friendly with Fay?

A. I think he was friendly with him while he was an officer. Certainly he wasn't friendly afterwards, as I understand.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. You mean after he went to jail?

A. Why, no, I don't think so. I can't answer that question.

Q. But so far as you know, and while he was an officer, Maloney was friendly with Fay?

A. Well, he was an officer. I believe the President was friendly with everybody.

Q. I am asking you specifically about Fay. Was he friendly with Fay?

A. As far as I know, he was friendly when Fay was an 2278 officer before had his troubles. After he went to jail, I don't suppose there is any connection there whatsoever.

Q. But you don't know that of your own knowledge, do you?

A. Oh, no. I am three thousand miles away from there, Mr. Freedman.

Q. Did Maloney ever make any statements about Fay which were unfriendly?

A. Well, no, not to me. Not to me.

Q. Not to the Board as a Board?

A. Not that I can recollect now. Fay has been out of the pictures for a long time, and it is a dead issue, and I never heard him discuss it at a Board meeting; so I would say that ...

Q. You don't know whether —

THE COURT: Mr. Wolfe said, "He is not finished with his answer."

A. Well, what did I say? Can you read that to me?

THE COURT: The answer was read.

THE WITNESS: —that I would say that no discussion was had in regards to Mr. Fay. That would be a —(2279) to make the long story out of an answer.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

BY MR. FREEDMAN:

Q. Are you able to state whether Mr. Maloney has been in touch with Mr. Fay during the period of time that he has been in jail?

A. I don't know a thing about it. I can't answer that. Absolutely no.

Q. When did you first learn that there was any trouble in Local 542?

A. I can't tell exactly who I heard. I am not sure but I heard it from Mr. Underwood. I can't say exactly.

Q. By the way, you have known Mr. Underwood, haven't you?

A. Yes, I have known Mr. Underwood.

Q. When you say you heard it from Mr. Underwood —

A. I am not sure. I don't want to be tied down to that. I don't recollect exactly where I first heard it. It might have been from Mr. Underwood.

Q. You know Mr. Underwood quite well?

A. Oh, yes. I have known Mr. Underwood for some time.

Q. How was he regarded by the Board generally?

A. Well, I don't know of anything wrong with the Board. I can't judge the Board.

Q. No, I say ——

(2280) A. I am just talking for myself.

Q. Did you hear any criticism of him by the Board?

A. No, I don't know that he was discussed before the Board until that trial come up, so far as I know.

Q. Were his activities in the Union regarded as satisfactory prior to the trial?

A. Well, I don't think that it was discussed. That wasn't in my line at all. I never heard that discussed.

Q. You met him at the convention, didn't you?

A. Oh, yes, I met him at the convention.

Q. And Mr. Maloney was there, too?

A. Oh, yes.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. And you met other people who knew Mr. Underwood?
A. Yes, I met ——
Q. Did you hear any criticism of Mr. Underwood or any of his activities?
A. I did not.
Q. That was a convention when?
A. Well, that is two years ago in Seattle.
Q. 1951?
A. I guess that is when it was, 1951. A forget years, but the last convention we had in Seattle.
Q. Did Mr. Maloney at any time indicate any criticism

(2281) A. Not to me.
Q. —of Mr. Underwood?
A. Not to me.
Q. Did you hear him make any criticism to anybody else?
A. No, I didn't hear any criticism.
Q. Did you talk to Mr. McDonald about Underwood?
A. I have no recollection of talking to him—you mean at the convention?
Q. Anywhere. Before the trial.
A. No, only I knew that Mr. McDonald is in fairly—I can't recollect now any conversation with McDonald about 542. Right now I can't.
Q. Now, in your official capacity you became aware of the trouble in Local 542, did you not?
A. Oh, yes, I knew that there was difficulty over there, trouble.
Q. Now ——
A. I must have known it when they served the papers.
Q. In what manner were you informed first of the trouble in 542?
A. I have no recollection exactly when I heard it first. I can't remember that exactly.
Q. Did you receive any report of an investigation or (2282) anything else from the General President or any other representative of the International?

A. Yes, I think we had reports in connection with Local 642.

Q. You mean 542?

A. Is it 5? 542.

Q. Yes.

A. I get numbers mixed up.

Q. Who sent that report out and when?

A. I don't know. We had the reports. I can't recollect who sent them out.

Q. Where are those reports?

A. Who are they?

Q. Yes.

A. I don't have any reports. I told you that in the beginning. Except the reports of the Executive Board meeting.

Q. I thought you said a moment ago that a report went out.

A. Information. I received information—first of all, I presume that you refer to the time that the charges were preferred against Mr. Underwood. Is that what you mean?

Q. And the trouble in 542 which led to the charges.

A. Well, I have nothing—I have no—much information (2283) on that. I wasn't connected with that whatsoever.

Q. Did you receive any papers or any documents regarding any of those matters?

A. I don't remember now whether I did or not.

Q. If you did, where would they be?

A. Well, they would probably be in the wastebasket.

Q. You mean you have no record of them now?

A. We wouldn't have room enough for all the reports that comes in here. We only keep official reports that we have to keep.

Q. Wouldn't that be an official report?

A. Not necessarily. Information. It might come as information.

Q. Well, did you get such ——

A. I have no record here now. I have looked through the desk, if there was any communication, but I have no records of any of those reports, so you will have to get them from the attorneys here. I guess they have them.

Q. Was there such a report?

A. Sir?

Q. Was there a report?

A. Information. I received information, yes.

Q. Information. I guess you can call it a report or (2284) anything else you want. But you say a statement or report or information went out, and you got it, is that right?

A. I said that the information came to me, like it would to any other vice-president.

Q. How did it come to you, in what form?

A. Well, there is many ways of communicating information.

Q. How did this information come to you?

A. Well, I have no recollection just how this came.

Q. Did you receive anything in writing?

A. I don't remember.

Q. Do you remember what it was that you received?

A. How could I remember ——

Q. I mean the substance of what it was, whether it was in writing or in oral form?

A. No, right offhand, I don't.

Q. Don't you remember what the information was?

A. I don't—if I remembered what the information was, I would probably remember when it came, and I don't remember now.

Q. You don't remember what?

A. I don't remember what? Is that what the question asks?

Q. Yes.

A. I don't know what it is. What you want to know?

(2285) Q. Are you saying you don't remember what the substance of it was, or whether it was in writing or orally?

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

A. I tell you that I have no recollection. I don't remember when it came and what was in it. I know that the information was gathered—you get a lot of information that you don't keep tabs on. Don't you?

Q. Are you saying you did get something in writing?

A. No, I am not saying that. I have no recollection. The only information I could possibly have, if I received a communication from Mr. Underwood—I know that I received some communications, but I am unable to find records of them, and they might have conveyed the information to me that he had trouble in 542, that is all, or maybe I talked to Mr. Underwood. I talked to Mr. Underwood when I was East, and he could probably give you that information. I have no recollection of anything else.

Q. You don't have any recollection of having received any information in written form or any report in your official capacity as General Vice-President?

* * * * * * * * *

Q. Of the trouble, of any trouble in 542.

A. No, I have no recollection of that here now.

Q. Was there any meeting of the Board called at any time prior to the trial regarding the trouble in Local 542?

(2286) A. Special meeting, for that purpose, you mean?

Q. Regular or special.

A. Not that I know of.

MR. FREEDMAN: Then the witness can answer again.

THE WITNESS: The answer was no, not that I know of, and I would know.

BY MR. FREEDMAN:

Q. Does a local union have a right to call a strike?

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

A. No, they have a right to contact the General President and be authorized to strike.

Q. Have you ever had any strikes in your local?

A. Well, we have been blessed without any strikes, except of a day or two now and then, that is all. Not what I could call a strike.

Q. Have you had any work stoppages?

A. Oh, yes.

Q. Don't you call those strikes?

A. Well, they have been caused by other crafts, and we respected their picket lines.

Q. You called no strike on your own at any time in your history?

(2287) A. No. If we have called any strike of our own?

Q. What is that?

A. Yes, we called a strike last year for four days, I think it was.

Q. Did you get permission of the General President?

A. We contacted the General President. He was in accord with it.

Q. He was what?

A. He was in accord with it, because we had a legitimate claim.

Q. Who contacted him?

A. I did.

Q. Before you had the strike?

A. Oh, yes, we contacted the General President.

Q. What provision of the constitution requires you to get permission from the General President?

A. I would have to read the constitution. I will look that up for you tonight.

Q. Would you look that up?

A. Make a note of all you want.

Q. Would you make a note of that?

A. Everything you want to know, and I will read the darned thing tonight.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. I already told you about your compensation and the other (2288) things.

MR. FREEDMAN: Would you make a note of them, Mr. Reporter?

BY MR. FREEDMAN:

Q. Do the locals have the right to make their own contracts?

A. Oh, yes, yes. They are finally approved by the General President.

Q. Can the General President dictate the terms of a contract?

A. No. We send them in to him for his approval. First we negotiate an agreement and then send them in to headquarters, and he O. K.'s them.

Q. Can he request a local to take a contract which is unsatisfactory to it?

A. I don't know whether he can or not, but he never done it with us.

Q. I am asking you whether he can?

A. I think that is a good question. I don't think he would. I would have to answer that as far as I am concerned. I am speaking for what I know. I have no knowledge of anything else.

Q. Is it your understanding that the General President can force a local to accept a contract which is unsatisfactory to it?

* * * * * * * * * *

THE WITNESS: Yes, the question is if the (2289) General President can force a Union to accept an agreement, a contract don't wish, is that it?

* * * * * * * * *

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

BY MR. FREEDMAN:

Q. Do you know what the question means?

A. Well, if I understand it, it means—am I to answer a question whether the President has the power to force a contract against the wishes of the local union? Is that it?

Q. That's right.

A. I would say, no, except in extreme cases where it was to save the organization. It could be—that requires a large interpretation. First of all, I don't think he would, but, second, he might have the power to save the organization or save the International. I don't think I am the proper person to make that decision.

Q. Would you say that if a strike was being carried on with very little unemployment ——

A. I am not familiar with the case ——

Q. Just a minute. Would you say that if the strike in Local 542 area—let me rephrase that. Would you say that if the strike carried on by Local 542 from May 1, 1952, resulted in very little unemployment among its own members?

A. I ——

Q. Just a minute.

(2290) A. Excuse me.

Q. —that the General President would be justified in stepping in to terminate a strike?

A. I am not in a position to answer that question. I feel that the one that should answer it is the General President himself.

Q. Were you aware of the injunction which was obtained by the employers in the Philadelphia area in May of 1951?

A. I have very little information.

Q. Do you have any information?

A. Only hearsay.

Q. What information do you have?

A. Well, it is the same story again, that I am not in con-

tact with Philadelphia very much, and I had no information worthwhile that would be of any consequence here.

Q. You mean you were not informed of those circumstances?

A. Well, not sufficient. It wasn't my business. I was here working, and I didn't have time to meddle into that Philadelphia situation. There are other people who were doing that.

Q. Was your advice sought in connection with International intervention?

* * * * * * * * *

THE WITNESS: No. I was going to ask for an (2291) explanation.

BY MR. FREEDMAN:

Q. Intervention by the International Union.

* * * * * * * * *

THE WITNESS: No. Condense it a little bit and I will try to answer it, if you will, please. So that I can answer it as I know.

MR. FREEDMAN: The question was repeated back by the reporter as follows:

"Q. Was your advice sought in connection with intervention by the International Union in the negotiations in connection with the strike between the employers and employees?")

BY MR. FREEDMAN:

Q. Do you understand that question?

A. Yes, I think if I understand correct, if my advice was asked in regards to International intervening into Local 542's business, is that it?

Q. That's right.

A. I would say no. My answer is no.

Q. Were you informed of the situation at all?

A. No, not directly, no. I repeat again that I had several (2292) communications—I would say one or two, from Mr. Underwood, and he kept me informed somewhat to what was going on, but it is so long ago now that I don't even recall what he wrote.

Q. Didn't you receive any information from official channels?

A. Not at that time, no.

Q. When did you receive information?

A. Well, we had a report at the meeting.

Q. At what meeting?

A. Well, the meeting right afterwards. Figure that out.

Q. After what?

A. After the International ——

Q. After supervision was imposed?

A. Yes.

Q. Can you state whether or not any evidence was presented to the Executive Board regarding the difficulties in Local 542 prior to the invocation of supervision?

A. No, I am not familiar with that.

Q. Wasn't it incumbent on the General President to keep the Board informed?

A. Well, it might be according to constitution. That provides for what, I guess, but he has full power to act and then report back to the Vice-Presidents.

(2293) Q. I see you have a constitution with you, Mr. Swanson.

A. Yes.

Q. Did you go over it during the recess?

A. While I was in there, I didn't have much time, but I

think I found what you wanted through the assistance of Mr. Thomas over there.

Q. Well, do you want to give us those answers now?

A. And I would like to point out ——.

Q. You say with the assistance of Mr. Thomas?

(2294) A. Well, he found them. I don't need no assistance. These articles stand on their own feet, but in looking them—on account of not reading the entire matter. It is on three different sections. I think that deals with what you want. First, there is the power of the General President. You found that on Page 9.

Q. What is this in answer to, Mr. Swanson?

A. What do you want to know?

Q. I say, your testimony you are giving now, the sections are in answer to what?

A. To what you asked me.

Q. Well, what, specifically?

A. You wanted me to read the constitution, so I read what I would. Perhaps this would solve the problem, because I couldn't remember it all by heart, anyway. What do you want to know?

Q. I asked you, No. 1, what provision in the constitution provided for the compensation of the General Vice-Presidents?

A. Any one of these does that.

Q. Will you make reference to them?

A. All right, I will read one of them. This is in Article III, "General Conventions, Powers. All the sovereign power, including the legislative, executive, administrative and judicial, of the International Union of Operating Engineers (2295) shall be vested in its General—"

Q. What page are you reading from, Mr. Swanson?

A. I am going to ask you to read, because I don't see very good.

Q. No.

A. So if you want me to read the whole thing, you read it.

Q. Go ahead. You read any part you want. You are doing very well. All I asked you to do was just tell me what page you are reading from.

A. Well, I am—very difficult for me to read, to tell you the truth. Where did I finish?

(The answer of the witness was repeated by the reporter as follows:

"* * * legislative, executive, administrative and judicial, of the International Union of Operating Engineers shall be vested in its General—")

THE WITNESS: "* * * General Convention when in session—" is that the question that you want to ask?

BY MR. FREEDMAN:

Q. Well, so far you haven't touched on any provision in the constitution which ——

A. All right.

Q. —gives the Board the right to ——

A. O. K. Let's go to 18. I will accommodate ——

(2296) Q. You were reading from Article III, Section 1, is that right? Is there anything in there which provides for the compensation?

A. I will let you determine that.

Q. You cited it. I am asking you, is it your contention that that section provides for compensation?

A. It is my contention that what I am now about to read will give the Board the power.

Q. What is it you are about to read?

A. I am now reading on Page 18, Article V, "Powers and Duties of the General Executive Board."

Q. Go ahead.

A. Article V, Section 2: "All the powers of the General Convention when in session shall, when the same is not in

session, pass to and vest in the General Executive Board * * *" That gives them power to set the wages any time they so desire, by the convention.

Q. I see.

A. That is my answer.

Q. And that is the answer to it, is it?

A. You asked a question, who had the power to get it, and I am giving it to you in the constitution.

Q. Does the constitution specifically provide for compensation for other officers?

(2297) A. The constitution gives the power to the Executive Board to provide for compensation for all the officers.

Q. I mean other officers specifically.

A. Well, I don't quite get that question. Other officers who, for instance? The President, Vice-President. They have the same powers as the convention itself has. Unlimited.

Q. Is it on the basis of that section that the General President receives his compensation, too?

A. I would say yes.

Q. Well, now, I refer you to Page 23. Will you please turn to Page 23 of the constitution?

A. Yes, sure.

Q. And now will you be good enough to read Article VI, Section 7. Will you read it out loud. Will you, please?

A. If I may read it to see what I want to read. "Compensation." "Article VI, Section 7. "The General President shall receive as salary such amount per annum as the General Executive Board may from time to time determine * * *" Do you want read the whole section?

Q. Yes, please.

A. "* * * provided, however, that such salary shall not be less than fifteen thousand dollars per annum. He shall by virtue of his office be one of the delegates representing this organization at the conventions of the American Federation of (2298) Labor or sessions of any of its departments."

Q. Now, that makes specific provision for the General President, doesn't it?

A. It provides the minimum.

Q. It also makes specific provision for his compensation, doesn't it?

A. No, it just says that it can't be less than that. That is automatically met by the convention.

Q. Let me refresh your recollection about just what you read. The article provides the General President shall receive as salary such amount per annum as the General Executive Board may from time to time determine, but not to exceed it, and then it goes on to say, but not less than fifteen thousand per year.

A. Yes.

Q. So that his salary is to be determined by the General Executive Board, is that right?

A. That is correct.

Q. Is there any similar provision for the compensation of the General Vice-Presidents?

A. No, but they have the power of the convention. Certainly, they have.

Q. I am asking you whether there is any similar provision for the General Vice-Presidents?

(2299) A. It is not necessary, because all the power of the convention is in the hands of the Executive Board when the convention has adjourned.

Q. If that was right, couldn't the Executive Board also fix the compensation of the President?

A. That is what I am saying, they do.

Q. But why, then, was this provision necessary?

A. I didn't write the constitution in the beginning. That is an old one. I can't answer that last question. I say I don't know why it was necessary.

Q. I see. But you can't find in here any comparable provision relating to General Vice-Presidents, is that right?

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

A. I haven't looked that far; if there is or not, I wouldn't say.

Q. Was Mr. Thomas able to point out to you ——

A. It isn't necessary, in my opinion.

Q. I know you have said that several times, but I am asking you, was Mr. Thomas able to point out to you any provision which specifically provides for compensation of the General Vice-Presidents?

A. Well, let me answer.

Q. Go ahead.

A. When I came in here, I told you that during the noon hour I had taken a little time in locating certain clauses (2300) in this constitution that would answer the question you asked me, so I wouldn't have to read all night; and I asked Mr. Thomas if he could direct me, so he assisted me in finding these sections, and I am reading them to you as I have them.

Q. So far you haven't pointed to any provision which specifically provides ——

A. Yes, I have.

Q. —for compensation ——

A. That last one gives them power.

Q. Does it mention compensation?

A. The convention has the power to do anything they want to.

Q. I know, but here in Article VI is a specific provision which gives the Board the right to fix the salary of the President.

A. Of everybody.

Q. Just of the President.

A. No, I don't think so, if it has the power of the convention.

Q. Well, your lawyers can argue that later on.

A. I am not going to argue it with you, because I am just telling you what is in the book. I can't interpret any further. Don't let us delay the trial.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

(2301) Q. Don't worry about me delaying this trial.

A. I am not worrying about you delaying the trial, but my ——

Q. I am asking you whether you or your attorney has been able to pick out any section—he gave you assistance, didn't he?

A. Yes.

Q. Was he able to direct you to any?

A. I don't know what he was able or not.

Q. But did he?

A. No, I didn't ask for any. I just—let me get it clear, so that we don't have no misunderstanding here. When I came out after we had that little lunch we had, I said now tonight—whether it should be in the record or not—we have another hearing in here tonight over the Welfare Fund, and I don't know how many hours I can spend reading tonight. I do all my reading at home, for your information. Even letters. I have a special light. Now, tonight I will probably be here unto twelve o'clock. There will be four or five attorneys here and the federal arbitrator in here, and this is the last hearing, so when I get out of here tonight I probably can't go home tonight and read. I asked Mr. Thomas to point out the sections that could possibly lead to the answer to Mr. Freedman, and so he pointed out (2302) Page 9; 18 and 106, and I tried the best I could to convey that information to you.

Q. And none of those provisions specifically refer to compensation, do they?

A. Well, I don't interpret that way.

* * * * * * * *

Q. You were also going to examine the constitution regarding the right of the local to call a strike.

A. I did.

Q. Did you do that?

A. Yes. I will read that to you now.

Q. What section is that?

A. Wait until I get that. I got to put on my glasses. It is on Page 106. And I marked it off very carefully in the book I handed back to you. I think it is in here, and I will read it to you. Is it all right?

Q. Sure, go ahead.

A. This is on Page 106, and under Article XXIII, Subdivision 11, relation with the employers.

(2303) Q. Section which?

A. And now I will come to the section. It is Article XIII, Subdivision 11, Section (c).

Q. Article XIII or XXIII?

A. I will read it to you and then you can find it.

Q. You mean Article XXIII, don't you?

A. No—didn't I say XXIII?

Q. I think you said XIII.

A. Oh, I made a mistake. I want to be corrected. Here is the reason.

Q. What page are you reading from now?

A. I am reading now from Page 6.

Q. 106, you mean?

A. 106; excuse me. I get confused in this deal here. It has been dealing—here is the answer to your question. It deals—"Nor shall any such action be attempted or taken unless the same has been sanctioned by the General President of the International Union."

We are dealing with strikes and so forth. And I think that was the answer you wanted from me, wasn't it? And I found this—had a little help to find it, but I could have found it myself if I had looked for it.

Q. Did you read the rest of that provision?

A. Well, I didn't read the whole article, but I guess we (2304) can read them if you want it. It covers considerable ——

Q. Will you read the beginning of the article. It is not

very long. So that the Court will have it all to see for itself whether you are justified in your conclusion. Read the whole Article XXIII (c).

A. It says: "No local union through its committee, Local Executive Board or Business Representative shall attempt to take or take any action involving a rupture of relations existing under a legal contract with any employer or declare a strike where such contract exists except upon the following reasons, * * *" and so forth.

Q. So that what you are talking about here is not a circumstance where there is a contract between the employer and the Union, is that right?

A. I am not talking. I am just reading what is in here.

Q. Didn't you take that into consideration?

A. No. It says here strike or declare a strike. You asked me to read the whole thing.

Q. Go ahead. Sure. I want you to read it all.

A. "1. Assisting trade unions or other union workmen. 2. Assisting Councils of Labor or other bodies with which the Local Union is affiliated. Violation ——

Q. 3.

A. "* * * by the employer of the written contract. To (2305) protect the craft jurisdiction or the territorial jurisdiction of the Local Union." Then you come back to what I just said.

Q. The point you read follows that. That is the end of it.

A. What I previously read follows that.

Q. Now, is that the section on which you relied?

A. No, that is the section that I sought to give the answer to your question.

Q. That is what I am talking about.

A. Well, yes.

Q. That section is limited, isn't it? It doesn't relate to all strikes, does it?

A. I don't think it is limited. I think it is broad enough to cover any strike, in my opinion.

Q. What does this mean, then? How do you construe this? You are an official. You are supposed to construe this agreement, aren't you?

A. I was elected by the membership, so I must be.

Q. Isn't this limited to situations involving a rupture of relations existing under a legal contract?

A. You want my interpretation of it. I will be glad to give it to you.

Q. Sure, I will be glad to have it.

A. Well, the General President is empowered to ——

Q. I mean of this clause.

(2306) A. Of that clause?

Q. Yes, that's right.

A. You are asking the wrong person to interpret the constitution. The General President has been vested with the power to interpret. I am not. I am just the Vice-President.

Q. Who rendered the decision that this clause means or refers to all strikes, regardless of whether it involves a violation of a contract?

A. I don't think a decision is necessary, unless the occasion arises, and then I presume that the President would render a decision, if there was any question as to its interpretation.

Q. You made an interpretation of this provision. Where did you get it?

A. I guess I misunderstood you, Mr. Freedman. You asked me a certain question of where in the constitution I found an answer to your question, and I done the best I could to give you those answers, as I see it.

* * * * * * * *

(2307) Q. But in any event, Mr. Swanson, I take it that this is the provision on which you rely in support of your answer?

A. This is the section that I sought to give you an answer

to your question. Is that clear enough? You asked me to look up the constitution, and so far I have located three sections.

Q. Were you given any assistance there by counsel?

A. By counsel. Yes, he said—he referred to page 9. He says that is it. Of course, well, after I look at this book, I am pretty well familiar with it, but he helped me in finding the pages. I didn't have much time. You know, I just came in a few minutes. Otherwise, I can read that if I have ample time.

Q. I was willing to give you ample time. Do you want more time?

A. I tried to explain a little while ago what happens tonight. I would be very glad to read this. Tonight I don't think I will be able to do it. But what could possibly come out of it, unless you will stipulate what questions you want to know.

Q. I told you what questions I want to know. If you find any other provision in the constitution before this deposition is terminated, I wish you would call it to my attention (2308) so I can ask you questions about it now, or during this deposition.

A. I don't think it is my business to tell you what questions you should ask.

Q. I have asked you the questions. I am just trying to be as fair as I can be.

A. I am just as friendly about this as you are. If you would be kind enough to write down any other matter that you feel that I should answer, I will be very glad to make the best effort I can to get an answer to those questions through this constitution.

Q. I would like very much to have your full answer regarding the constitutional provisions upon which you rely in support of your answers, one, that the constitution specifically makes provision for the compensation of General Vice-Presidents.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

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BY MR. FREEDMAN:

Q. And, two, the provision regarding the right of the locals to call a strike generally. Those are the two things that I have been asking you about, and if during the course of this deposition you are able to call my attention to any other constitutional provisions, I will be very glad to have them, and to ask you questions about them.

A. Will you be kind enough to write it down, and I will (2309) do the best I can.

Q. I have already repeated it several times.

A. I referred to this section. Maybe you can give me the answer. In Article III, Section ——

Q. I know, Mr. Swanson. I don't want to engage in any argument with you.

A. It wouldn't do you any good.

Q. I am just looking for the facts here.

A. "All the sovereign power, including the legislative, executive, administrative and judicial * * *." I understand sovereign power is almost supreme, as being thought—maybe I am wrong, but then that is how I interpret it. All sovereign power. I can't do no more than that. That is God Almighty. That shouldn't be in there.

Q. There is nothing off the record.

A. Sovereign is big.

Q. Mr. Swanson, do you receive any other compensation from the International Union other than salary as General Vice-President?

A. Are you through with the question?

Q. Yes.

A. I receive compensation for transportation and so forth when I travel for the International.

Q. You mean expenses?

(2310) A. I mean just what I said. Transportation.

Deposition of Victor S. Swanson as on Cross-examination. Offered by Plaintiff

Q. How about subsistence when you are out of town?

A. I am not working directly for the International. I am working for Local No. 3. If I am called by the General President to go a certain place, then that is taken care of.

Q. How frequently do you do that?

A. Oh, not very often. I used to, but in the last two or three years, I have made very few trips.

* * * * * * * * *

(2311) Q. Any other monies at all. First of all, you get a salary, don't you? Is that correct?

A. Yes, that is correct.

Q. Then you get these expenses you just mentioned?

A. I said traveling expenses.

Q. Well, whatever they are.

A. Yes.

Q. Do you get anything besides that from the International Union?

A. That question I can't hardly answer, because I don't know what it is leading to.

Q. What difference does it make where it is leading? You know what the facts are.

A. Don't rush me, because I am not going to answer it.

Q. I haven't said a word. I am not rushing you. You take as long as you want.

A. Right offhand I can't answer that question. I will have to look through the records and see if I got a ——

Q. Don't you know whether you get any other compensations or any other monies from the Union?

A. From the Union?

Q. From the International Union.

A. I get paid by Local 3.

Q. I say from the International Union.

(2312) A. I just told you, I work for salary, and if I travel I could get transportation.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. Now, my question simply was this, to repeat it: Do you get any other monies than that from the International Union?

A. I would say no, as I see it.

Q. Do you get any money for attending the Executive Board meetings?

A. I get a salary.

Q. A special salary for that?

A. No, I get a salary. I get a salary.

Q. What is the salary for that?

A. Ain't that too bad.

* * * * * * * * *

Q. But you do get other compensation besides those that you have mentioned?

A. I have already answered the question as far as I am going to answer it.

Q. It is true, isn't it, that you do get a salary for attending the meetings of the Executive Board?

A. I didn't say it was true.

Q. You said it before, didn't you?

A. Read the record and you will find.

Q. Is it or is it not true?

(2313) A. If you read the record ——

Q. I am asking you to state now whether it is or it is not true. Mr. Swanson, I want to say, unless you start answering questions, I am going to appeal to the Court for a court order.

A. Why don't you?

* * * * * * * * *

BY MR. FREEDMAN:

Q. Is it or is it not true that you receive compensation for attending Executive Board meetings?

A. I will let my answer stand as it is.
Q. You refuse to answer the question?
A. I have already answered it.
Q. Well, what was your answer?
A. Read the question.

* * * * * * * * *

(2314) Q. Mr. Swanson, I want to get it perfectly clear whether the salary you talked about before for attending Executive Board meetings is the same salary that you get from the International for being Vice-President, or whether it is a separate salary that you get for attending Executive Board meetings. Now, which is it?

A. I told you that I receive a salary as a Vice-President. That is all I am going to tell you about money.

Q. Does that include your duties in attending the Executive Board meetings?

A. It does. It includes all the duties that I perform throughout the year.

Q. And you get no special compensation for attending the Executive Board meetings?

A. I have already answered that.

* * * * * * * * *

(2315) Q. Now, it is a perfectly simple question, Mr. Swanson. Do you get any special compensation for attending Executive Board meetings?

A. I have already answered that question, that I get transportation and I get a salary. Expenses.

Q. When you say salary, do you mean the salary that you get as Vice-President, or a special salary for attending the Board meetings?

A. I have no special salaries. I told you I get a salary by the year. I get so much a year. Then ——

Q. How much is that a year?

* * * * * * * * *

THE WITNESS: What is the use of wasting time? For instance, some time ago I had occasion to go to New York. I think it was in New York we met. I was sent on a special mission. I received my transportation. Sure.

BY MR. FREEDMAN:

Q. Now, you attend quarterly meetings of the Executive Board, do you not?

A. Yes, sir.

Q. You get your transportation and your expenses for that (2316) don't you?

A. I get—I told you I get the transportation and my salary.

Q. That is the salary that you mention as a General Vice-President?

A. Oh, I don't know how to interpret it. I told you I get my salary as a Vice-President and my transportation.

* * * * * * * * *

(2317) Q. Let me finish. I want to make it as clear as I can. I want to know from you whether or not you get any special compensation for attending Executive Board meetings?

A. I have answered that, and I told you that I get the transportation—I get paid for the transportation, and I get my salary as a Vice-President.

Q. And aside of that salary, you get nothing more as compensation for attending the Executive Board meetings?

A. I have already told you what I get.

Q. I just want to be sure you understand it, now.

A. I understand it all right.
Q. And your answer is you get no other compensation?
A. My answer is what is in ——
Q. Please let me finish. And your answer is that other than the traveling expenses and the money which you get as General Vice-President, you get no additional compensation for attending Executive Board meetings, is that it?
(2318) A. My answer is in there.
Q. Do you understand that question?
A. That is immaterial. I have answered. All ——
Q. I am asking you to answer this question now.
A. It is in there.
Q. I am asking you to answer.
A. I get a salary ——
Q. Wait.
A. And I get transportation.
Q. Don't spar with me.

BY MR. FREEDMAN:

Q. Now, do you receive any other compensations from the International Union other than traveling expenses and the salary which you receive as a General Vice-President? Compensations or monies, I should say.
A. That is the same question you asked before, is it? If it is, why, my answer is the same as before.
Q. No, it is another question.
A. Well, I interpret it to mean the same as you have asked before, and I have answered.
(2319) Q. What is your answer? I am trying to find out what the answer is.
A. Well, let me tell you. I receive a salary. Do you understand that?
Q. A salary as General Vice-President?
A. Yes, Vice-President.
Q. Yes.

A. And if I travel, I receive transportation expense.

Q. I understand that.

A. That is all.

Q. And other than that, now, the salary which you said before you received a salary for attending Executive Board meetings ——

A. No. I said I received a salary.

Q. I just want to get it straight.

A. I receive salary as Vice-President.

Q. And other than those two items, you get no other monies from the International Union?

A. I told you that I receive transportation expenses.

Q. Well, you said that. Other than the cost of your transportation and your salary as a General Vice-President, you receive no other monies from the International Union for any purpose whatsoever, is that right?

(2320) A. Other than what?

Q. Those two things you outlined a moment ago.

A. That is what I receive.

Q. Will you answer the question now.

A. I answer just the way I did.

Q. Well, repeat it, so that you won't say ——

A. You repeat.

Q. —at any later time you misunderstand.

A. Ask a different question.

Q. All right. Other than the salary which you receive as General Vice-President and the monies which you receive for traveling expenses, you receive no other monies from the International Union, is that right?

A. I am not going to answer that question any more times. That's right. I am not going to answer it.

Q. Is that correct?

A. I am not going to answer your question.

Q. You are not going to answer the question?

A. No, not that question, because I have already answered it, in my opinion, a dozen times to you. So that is all I am going to answer.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

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(2321) Q. Now, do you recall when Mr. Underwood was tried on the charges that were preferred against him? Do you recall that meeting?

(2322) A. I was there.

Q. You were there?

A. Yes.

Q. Was there any mention made on that day of the appeal which had been filed by the local union against the filing of supervision?

MR. WOLFE: Against the what?

BY MR. FREEDMAN:

Q. Against the order of supervision.

A. I have no recollection now of that being mentioned. Maybe it was, but I can't remember.

Q. You knew there had been an appeal filed, didn't you?

A. If you tell me, maybe—I don't recall any having been filed right now, but maybe they had.

Q. Didn't you get a copy of the appeal papers?

A. I probably did, but I have no recollection now.

Q. Did you examine them?

A. I have no recollection of that now.

Q. Are you able to state whether or not you received the appeal papers?

A. I don't even know what time you refer to, Mr. Freedman.

Q. At the time of the trial of Mr. Underwood on the charges.

A. That was on 17th of September. Was that the day you (2323) refer to?

Q. Approximately then.

A. Yes, about that.

Q. Of 1952?

A. Yes.

Q. Now, you knew that prior to that time an appeal had been filed by the Local Union 542 from supervision?

A. I am not familiar with that at all, and I have no recollection of it. That is approximately the way—I can't recall it.

Q. Weren't you advised of it by the International Office?

A. I don't know now whether I was or not, but I have no memory of that fact.

Q. Weren't you given a copy of the appeal papers?

A. I probably was, but I haven't got it here.

Q. Weren't you given a copy of the answer which the local union had filed to the order of supervision?

A. I can't remember now whether I did or not, to tell you the truth.

Q. Don't you have any ——

A. I don't recall. I can't remember.

Q. Don't you have any recollection whatever of the position which the local union had taken and of their contention?

(2324) A. I wasn't involved at all.

Q. You mean you were not interested in that?

A. I was interested, but I wasn't involved.

Q. You were a member of the Board, weren't you?

A. Yes, I am a member of the Board.

Q. Why wasn't that appeal heard at the same time that Mr. Underwood's appeal was heard?

A. I can't answer that question, because I didn't handle any part of it.

Q. Who did handle it?

A. The Board handled it, I guess.

Q. You were one of the Board, weren't you?

A. Yes, but I don't think it was up there—I have no recollection if it did come up. How can I answer things I don't remember?

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. Isn't it the Board's function to schedule hearings on appeals pending before it?

A. It might be and might not, I don't know.

Q. Whose function is it?

A. The Board. I just cited where the Board has the power to do anything the convention can do.

Q. You were one of the Board?

A. That is correct.

Q. And you would have to have knowledge of what was being (2325) done and what was scheduled and not scheduled?

A. I just told you, I have no recollection. That is the best answer I can give you, because that is all I know.

Q. If you received copies of the appeal papers, would you have kept them?

A. I might and I might not.

Q. I ask you to examine your records here now. You are in your own office. And see whether or not you have copies of those appeal papers.

A. I would be glad to do that, but I can't do it in a minute.

Q. I will wait. How long will it take you?

A. Of course, I don't keep all my files. I would have to go to my secretary and have her look it up.

Q. Will you please do it now?

A. Yes. Better have a recess, then.

Q. Please do it now. We will have a recess. It is now 2:20. We will wait for you to go out and come back with your answer, and I will ask you not to confer with any one other than your secretary and those who have custody of your records.

A. What is it you want, now, so I can tell her?

Q. I am asking you—the record speaks for itself—I (2326) asked you to determine whether or not you have copies of the appeal papers by the Local Union 542 against the order of supervision.

A. You want to know whether I have a copy of that in this office?

Q. That's right. No, I want to know whether you have a copy.

A. I will go to the secretary and find out.

Q. And while you are there, you might ask her whether you have a copy of the appeal papers filed on behalf of Mr. Underwood, too.

A. I told you in the beginning that I didn't have any of those papers left that he sent. How many times do I have to say it so that ——

Q. Those two appeals were taken almost simultaneously, so that all I am asking you ——

A. I went through the desk, asked my secretary to go through all the papers. I knew I received some letters from Mr. Underwood, but I can't keep all the letters I get here. Probably I get one hundred a day some days, and consequently I was in hopes I would find some of those letters, and I wasn't able to find any, and the secretary has been able to go through the two files and hasn't found any. Now, I am going to find out if there is any on the appeal. I will (2327) go in and see if I can find it.

MR. FREEDMAN: Let the record show that he left the office at 2:21.

(The witness left the hearing room at 2:21 p. m.)

(The witness returned to the hearing room at 2:30 p. m.)

MR. FREEDMAN: The witness returned at 2:30.

BY MR. FREEDMAN:

Q. What is your answer now, Mr. Swanson?
A. Answer to what, I found any records?

Q. That's right.

A. I am unable to find any—any kind of records, and my secretary has spent practically all day in there. I knew that at one time I received, I would say several contracts from Mr. Underwood, and I thought I had them in there, but I can't even find them. I know that he mailed them to me.

Q. What I was specifically interested in was the appeal which had been filed on behalf of the local union against supervision, and the answer of Mr. Underwood to the charges; and you say you have no record of those at all?

A. No; I have no record in this office at the present time.

(2328) Q. Well, do you keep records in any other office or any place else?

A. No. We have a very large office here. We have a good many rooms. We have sixteen thousand members here, and we have a lot of record files. We made an honest effort all day yesterday to find them. I told her to go over, and she is still working, but we haven't—it might be transferred into some other office. If we have the records, I would be tickled to death to bring them into here. And she is still looking. But she will have to go into some other office and see if they are filed away. We filed away a lot of them, stacks of records. We have one room full of records right now.

Q. Aren't the records indexed?

A. Yes, but I fail to find any in connection with this case. I can't find anything.

Q. You have made a search, and you fail to find any records involving this case?

A. So far, I haven't been able to find it.

Q. Now, Mr. Swanson, do you receive any compensation or income other than that which you get from the International Union?

A. You mean from a local union here?

(2329) Q. That's right.

A. Yes.
Q. What is that income?

MR. THOMAS: Same objection, Mr. Freedman.

THE WITNESS: Same answer as I gave you before.

BY MR. FREEDMAN:

Q. You mean you refuse to answer?
A. Yes, I don't think it would affect this case whatsoever.
Q. Now, other than the compensations which you receive from the International and the local union, do you receive any other income?
A. You mean like ——
Q. From any source.
A. Income on Government bonds?
Q. Anything. From any source.
A. I don't think that has anything to do with this case.
Q. Well, do you receive any income from any other source?
A. That hasn't anything to do with this case.
Q. Do you refuse to testify to that?
A. I don't think it has any bearing on this case.
Q. Are you refusing to answer the question?

* * * * * * * * *

THE WITNESS: I am not going to answer it.

(2330) BY MR. FREEDMAN:

Q. What did you say, you are not going to answer it?
A. No, I don't think it has any bearing on this case. That is my opinion. I don't think the judge will think so, either.
Q. Mr. Swanson, were you aware of the fact that Mr.

Meany had interceded at the request of the employers, or on behalf of the employers in connection with the strike which was being conducted by Local 542a?

A. No.

Q. You weren't aware of that?

A. No.

Q. Did Mr. Maloney ever tell you?

A. No.

BY MR. FREEDMAN:

Q. Mr. Swanson, do you make regular periodic reports to Mr. Maloney, the General President, regarding your activities in this region?

A. I do not, no.

Q. Do you make any reports to him?

(2331) A. Not in writing.

Q. Well, how do you make your reports?

A. Oh, I may report to him over the telephone, or he may be visiting here and I talk to him.

Q. How frequently do you talk to him?

A. Well, that—I quite often contact the office. I either talk to him direct or indirect. I would say sometimes several times a month. Sometimes not any. It differs so much.

Q. On an average, what would you say?

A. Well, it is awful hard to tell you exactly. I would have to—now, take last week, I talked to him every day. He was in Los Angeles. Three or four, five times a day.

Q. On an average, would you say it is once a week?

A. Not in Washington, no. Not when he is in the office I would say the nearest I can come to that, probably three or four times one month, and then not any for one or two months. It depends upon what conditions that are involved.

Q. And it is all over the telephone?

A. Well, yes. I often talk to him over the telephone.

Q. Don't you make any memoranda of your conversations?

A. No. We don't pay no attention to that. No.

(2332) Q. You keep no records of your conversations?

A. No, no.

Q. You say how many members are in your organization?

A. Well, I think it is 18,067.

Q. That is in Local No. 3.

A. That is Local 3.

Q. Over what other locals do you have jurisdiction as a General Vice-President?

A. I would say I cover the eleven western States.

Q. Do you want to designate those, please?

A. You can call the eleven western States. You call—first of all, I want to know just how far your jurisdiction is intended to be. The General President has entire jurisdiction over the entire territory, but what is the question? What do I have anything to do with?

Q. I am asking you how far your jurisdiction extends?

A. Well, if you refer to the local union, it might cover northern California, northern Nevada, and the State of Utah.

Q. I am talking now about you personally, as a General Vice-President.

A. As a vice-president. Well, I would say that on the Pacific Coast, the western States here, that I am the only Vice-President out here, except now when Mr. McDonald is (2333) here. He has been here assisting me for the last year, practically, or working together, rather.

Q. Did you ask for him?

A. Yes, I asked for Mr. McDonald.

Q. When?

A. Oh, it is about a year ago, a little over a year. This is a very large territory here. We cover an enormous lot of people here, and it is too much for one man to do it all, so I asked if I could get McDonald out here. I asked him to come out here. I also asked the General President.

Q. So just about a year ago you suddenly decided to ask for Mr. McDonald?

A. No, not suddenly.

* * * * * * * * *

THE WITNESS: Oh, no, that isn't done suddenly. I had had it in mind a long time before.

BY MR. FREEDMAN:

Q. That was the first time, however, you asked for him?

A. Yes, I don't know exactly, it is over a year now he has been out here. I think he can answer that question best how long he has been out here. But he didn't come out here when I first asked him, because it took a little while. I (2334) asked him to come out, and he had a job some place else, so I asked the President if he could send him out here, and he said, "I will as soon as he is available," and here he comes. He is here now.

Q. When did you ask the President to send him out?

A. Oh, it was over a year ago. It is over a year ago since I asked him, a little over a year.

Q. And have you found Mr. McDonald since he came out here to be performing his services satisfactorily?

A. Absolutely.

Q. Is he reliable?

A. As far as I am concerned, he is.

Q. And you trust him?

A. Yes.

Q. Do you find him competent?

A. I trust everybody. That is all right.

Q. Do you find him competent?

A. I do.

Q. Did Mr. Maloney at any time tell you that he didn't have any faith in Mr. McDonald?

A. No, he never told me that, that I know of.

Q. Did he ever tell you, or so far as you know, any other member of the Board, that he was relying on Carter (2335) and he did not trust McDonald?

A. No, I don't know what he told any other members of the Board.

Q. I said so far as you know.

A. No, I don't know.

Q. And he never told you that?

A. No. That is, that I can recall now. I can't remember. I don't remember all the conversations we had.

Q. Did Mr. Maloney ever tell you as an official Vice-President about information that he received from Mr. Carter?

A. No, offhand I can't remember any—I don't think he discussed that with me. I was out in the West and he was East, and I guess he dealt with people there more.

Q. Is it customary for the General President to rely on the Vice-President in the area to determine the conditions in that area?

A. Oh, I don't know what is customary for the General President to do. I couldn't answer that question, Mr. Freedman. That is entirely up to the President to know who he is going to rely on, in my opinion. I couldn't talk for him. He would be the best judge to answer that question.

Q. Well, when Mr. Maloney wants anything in this region, who does he communicate with, you?

(2336) A. Well, yes, I think he talked to me about it as a rule; if there is anything important that he wants changed, he calls me up and asks me about it, and asks my advice, and I get this advice from him, and we go ahead and do it.

Q. Did you ever find out what the issues were in connection with the strike conducted by Local 542 leading to supervision?

A. No, I would say the only thing I found out what transpired during the trial. The evidence that was presented there, that's all.

Q. What did you find out from that evidence?

A. Oh, I just found out what the charges were, and I heard the trial, that's all.

Q. What were the charges? What charges are you talking about? Against the local?

A. I don't know what you are asking. What charges did you refer to, the charges against Mr. Underwood?

Q. I was talking about the strike.

A. Well, I don't know exactly what—what was the last question, then? So that I can correct it. Can you tell me the last question?

(The question was repeated by the reporter.)

THE WITNESS: Yes, I am asking now what you (2337) mean by the question. If I knew what the charges were against the local? Is that the question?

BY MR. FREEDMAN:

Q. No, the issues which were involved in the strike. I asked you whether you knew what the issues were involved in the strike which was being carried on by Local 542 from May 1, 1952.

A. No, I would say that I wasn't familiar on that, no. I was out here, and that was going on there, and whatever I got was just by hearsay mostly here.

Q. But you went East for the Executive Board meeting and for a convention ——

A. I was there, yes.

Q. —in September, did you not?

A. Yes.

Q. Weren't you advised of those circumstances at that time?

A. Well, there was a trial—is that the time you have reference to a trial? When the trial was.

Q. That's right. Underwood was tried at that time, too.

A. That's right, I was at that meeting.

Q. Didn't you learn anything about the issues involved in the strike?

(2338) A. I don't think that was the question there. As far as I know, there wasn't any question pertaining to a strike. I heard—the only thing I heard there was the trial. That was the main issue there, as I remember it. The minutes will show that.

Q. Wasn't the strike involved in the trial?

A. I don't think that was the issue in the trial.

Q. Wasn't it involved in the trial?

A. Well, I don't know whether it was or not. I told you before that I am not familiar with the strike. I heard—I had some statement made from Mr. Underwood in regard to that, I think, and other people. That is all I knew. I wasn't there. I was at the trial, however.

Q. Well, I am talking about the trial.

A. Sir?

Q. I am talking about the trial. I am talking about the information which was introduced in the trial.

A. The only thing I recall about the trial was there were certain charges preferred, and they were hearing the charges. I don't recall any matter pertaining to a strike I think it was—the charges were preferred against—Carter preferred charges against Mr. Underwood, and we were hearing the case.

(2339) Q. Well, wasn't there a strike tied in with the charges?

A. Maybe there was, but we didn't hear anything about that, to speak of. There might have been—I don't recall that being brought up. That was not the issue in the hearing. That might have been a side issue there.

Q. You paid no attention to that?

A. Oh, I pay attention to everything that I can.

Q. Don't you have any recollection of it?

A. I say I don't recall that at all. I do recall about the trial. That is, a reasonable memory of that.

Q. Do you recall the report, or any report which might have been made by Mr. Maloney regarding his order invoking supervision over Local 542?

A. Right now I can't recall of a report at that meeting. There might have been, but I don't have any recollection.

Q. Do you recall the basis upon which he invoked his order, or at least the basis upon which he said he invoked his order?

A. No, I just told you that I have no recollection of it now. How can I remember that? If I remember it, I would tell you.

Q. Was the appeal of the Local Union 542 from supervision ever up before the Board?

(2340) A. I don't remember. I don't think—I don't remember. I don't think so. Maybe it was, but I can't ——

Q. Did you attend the meeting in Miami?

A. I attended every meeting for several years.

Q. Was it brought up then? Was it brought up at the meeting in Miami?

A. I wonder if the record would show that.

Q. No, I am asking about your recollection.

A. I am telling you that I don't remember. I would like to have refreshed my memory by reading the records. I can't remember all those things. Maybe you can, but I can't. I would like to have my memory refreshed by certain records, and then I can tell you everything that I know. If you have the records there and cited them to me, that would refresh my memory, and perhaps I could give you the answer I want.

Q. But you have no independent recollection at this time?

A. Not at this time.

* * * * * * * * *

(2344) Q. I don't want you to read anything. They are the minutes. You said before you wanted the documents

to refresh your recollection, and your counsel has handed me these documents. As far as I am concerned, feel free to refresh your memory from anything that you want.

A. These minutes seem to speak for themselves. I wouldn't contradict these minutes. I told you that I didn't recall. Now, it is very plain here. They speak for themselves. He laid it before the—this Case No. 1—this took place in February 12.

Q. Just refresh your recollection, Mr. Swanson, and then I will ask you some questions. All right. Have you refreshed your recollection?

A. I have, so far as the report of the General President is concerned. I just read it.

Q. Does it bring back to you—here is another one. Did you read the Case No. 2?

A. No, I didn't read that.

Q. Read that one, too, so that we want to be sure that you get the benefit of all of the minutes.

A. Well, that is all right. I can't add or take away from that.

Q. Have you refreshed your recollection?

A. I read it, yes.

(2345) Q. From these two sets of minutes, one ——

MR. WOLFE: They are not two sets of minutes. There is one set of minutes for that meeting.

MR. FREEDMAN: One set of minutes.

MR. WOLFE: But there are two cases referred to as cases that came up at that meeting.

BY MR. FREEDMAN:

Q. Did you read Case No. 1 and Case No. 2 on page 4?

A. I read Case No. 1 and part of No. 2.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. Well, don't you want to read it all? I want to be sure that you get the benefit of all of it.

A. Well, you want me to read all of this?

Q. I want you to read the whole reference to Local 542 affairs or to Mr. Underwood.

A. I have read 1 and 2.

Q. Has it refreshed your recollection and ——

A. Yes, it has to a certain extent.

Q. Let me say before we go into that, that refers to Case 1 and 2 of the minutes of the General Executive Board of the International Union of Operating Engineers held at Monte Carlo Hotel, Miami Beach, Florida, February 10 to February 12, 1953. Now, what was your answer to that, Mr. Swanson?

A. I would say both 1 and 2 are a correct record of what (2346) happened, took place.

Q. Did they refresh your recollection?

A. Well, that is not—they refreshed. I just read it. What is in the record, I would say is true.

Q. Do they bring back to your mind what happened?

A. Yes, sure. It says right there what happened. The secretary in Section 2 read to us—it states—if you read it, you will get it, too.

Q. Oh, I am going to read it to you right now. Now, it first says: "General President Maloney laid before the Board his report on conditions existing in Local Union No. 542 at Philadelphia." Now, what were the conditions that he laid before the Board?

A. I can't add to what it says there.

Q. Well, it says here—you said before ——

A. It dealt with the conditions in general in Philadelphia, and that is—as I stated before, I had no, practically no recollection of this happening, but now my mind is refreshed to the extent that I know he made this report and he dealt with the strike situation.

Q. If it refreshes your recollection, you ought to remember something about what he told you.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

A. I remember everything that is in there now, but I say that I will support that, that that is a true statement (2347) of what took place.

Q. But you can't remember ——

A. You want me to say something that wasn't reported.

* * * * * * * * *

Q. Do you understand the question, Mr. Witness?

A. What is the question?

Q. Now, it states here that the General President laid before the Board the conditions—his report on conditions existing in Local No. 542. Now, what were the conditions as he outlined them?

A. Mr. Freedman, my memory is refreshed to a certain extent, but I have no recollection of everything that was said there.

Q. Do you have any recollection of anything he said?

A. No, my recollection, he said he uncovered the (2348) entire situation was going on in Philadelphia and explained to the Board his reasons for taking certain action. I couldn't go into detail and repeat word for word what he said.

Q. I am not asking you to repeat word for word what he said. I am asking you to give me the substance of what he said, any part of it that you remember.

A. Let's see. I told you a minute ago that he described the situation in Philadelphia. Now, I can't recall exactly the words he used. There was trouble there. And according to his own statement ——

Q. What kind of trouble?

A. Well, there were strikes and difficulties that had arisen there. So I think I will let my statement stand that—as before, that I don't remember exactly what happened. My memory is only refreshed as to the fact that the president made a report. I will let the report stand on its own feet, so far as I am concerned.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. I am asking you what the report was, so far as you remember it, or at least the substance of it.

A. That is my report, or, that is my answer to you. I don't recall now everything that was said there.

Q. You said he mentioned something about strikes.

A. I think that is what that says there, isn't it?

(2349) Q. Do you have any independent recollection of what he said?

A. No, I told you that I didn't recall—I couldn't recall or remember everything, so there isn't any use to just making one blunt statement.

Q. I am not asking you to remember ——

A. I didn't remember. That is a good answer, isn't it?

Q. Do you remember anything?

A. Well, if you don't remember anything, you shouldn't be asking me the questions.

Q. Do you understand the question that I just asked you?

A. I remember that that is—as far as I can see, the statement in that book is correct.

Q. No, I said do you remember anything about what he told you?

A. Well, what he told me. He explained before the Board the reasons for doing so. I don't remember exactly what he said, no. I told you before ——

Q. You don't have to tell us exactly.

A. I have forgot all about it, and now you have revived my memory to a certain extent, and I read it, and it doesn't add anything to my memory, except that it took place there. What else—do you want me to report something that I don't know?

(2350) Q. I am just trying to find out what you do know.

A. I have given you what I do know. I had forgotten it. After I read it, I am reminded something was said there, and that refreshed my memory that something was said there, but as far as exactly what was said, I don't remember.

Q. When you say as far as exactly what was said, do you remember even substantially what was said?

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

A. Well, I have told you—I don't remember.

Q. You said exactly. Do you remember substantially what was said?

A. I don't remember.

Q. Do you remember anything that was said?

A. I remember—I just told you, how many times do I have to explain the same thing over again? I have told you that I had forgotten the entire incident, unfortunately, and now you read this to me. Now I am reminded of the fact that this took place, but I still don't know exactly what was said, but my mind is refreshed to the extent that I know that something like that happened there, that the President reported, but I have no recollection of exactly what he said.

Q. I take it, then, that other than the fact that something was said about the appeal by the local, you have no other recollection?

A. Not in connection with this statement.

(2351) Q. Sir?

A. In regard to this report from the General President?

Q. In regard to anything that happened in Miami regarding the appeal by the membership of Local 542?

A. Not right now I haven't, anything more than I have told you.

Q. At that meeting do you remember whether Mr. Carter made any report? That is at the meeting in Miami.

A. No, I don't remember.

Q. Was he there?

A. I am pretty sure he was there, but whether it was at that meeting or not, I don't remember. He generally was in Miami whenever I was there, but I can't tell you definitely now.

Q. You don't remember whether he made a report there or not?

A. No, I have no recollection of whether he made a report there or not.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. Was McDonald at that meeting?

A. Who?

Q. McDonald.

A. Yes.

Q. Did he have anything to say?

A. I don't recall of him having anything to say at the Board (2352) meeting right now. He might have, but I don't recall that. He was at the meeting.

Q. You suggested before that Maloney talked about the strike. Did he justify his actions in any way in breaking the strike in Philadelphia?

A. At this meeting?

Q. Yes.

A. Well, since I don't remember exactly what he said, but it is my opinion, as I can recollect now, that he did set forth his reasons, and that—his reasons for doing so, and that he justified his actions.

Q. What were his reasons?

A. Well, I just told you that I didn't recall exactly what he said. I suppose so I can't go into that any more and give you any further information. My memory isn't clear on that, so I can't do that.

Q. That was at the meeting in Miami?

A. You are talking about the meeting in Miami now?

Q. That's right. Is that right? Is that your answer to it?

A. Yes, that is correct. That is my answer.

Q. Did Mr. Maloney report on the strike at any other time?

A. In Miami?

Q. No, at any other time, any other place?

A. Not when I was there. To my memory. I can't recall (2353) whether he reported.

Q. Is that the first time you heard his report in connection with the strike and why he terminated it?

A. I can't pick exactly the dates, I am not sure.

Q. I don't care about the dates. I am just asking you, is that the first time?

A. Whether that was the first time or not I can't answer, because my memory isn't clear on that point.

Q. Was there any questioning of Mr. Maloney by the Board members when he made his report? I am talking now about Miami. You said that he made that report in Miami. Now, I ask you to direct your attention to that.

A. Referring to that article in the magazine or in the minutes?

Q. No, I am asking you. I am not referring to any article. The only reason the magazine was given to you was because you wanted the minutes to refresh your recollection.

A. What was the question?

MR. FREEDMAN: Do you want to give him the question, please?

(The question was repeated by the reporter as follows:

"Q. Was there any questioning of Mr. Maloney by the Board members when he made his report? I am (2354) talking now about Miami. You said that he made that report in Miami. Now, I ask you to direct your attention to that.")

THE WITNESS: I have no recollection of anybody asking questions. They might have, but I don't remember. I know I didn't.

BY MR. FREEDMAN:

Q. Did any of the members of the Board or anybody else question Maloney about his reasons when he reported on the strike? At any time.

A. Well, I don't know. I never questioned.

Q. Did you ever hear anybody else ask him any questions?

A. I didn't hear anybody.

Q. At any time when he might have reported on it?
A. On this question? I don't know. I never questioned him. They might have questioned him, but I don't recall.
Q. Why didn't you question him?
A. I didn't feel that I should, because I was satisfied with his report.
Q. And you don't know what his report was?
A. Well, at the time I knew.
Q. You have no present recollection of any of it now, is that right?
A. Not any more than I have told you.

(2355) * * * * * * * *

BY MR. FREEDMAN:

Q. Mr. Swanson, what are your views regarding supervision? Do you feel that the power of supervision should be invoked only in emergency cases?
A. That is correct.
Q. And don't you feel that supervision should not be imposed until a full investigation and hearing has been held?
A. That is correct.
Q. Do you know whether there was a hearing and an investigation of the circumstances before Mr. Maloney invoked supervision over Local 542 in August of 1952?
A. My answer to that would be there must have been a hearing.
Q. Well, I ask you whether you know of your own knowledge?
A. Well, I wasn't there myself, but I believe that there was.
Q. You believe he wouldn't invoke supervision without first giving them a hearing?
A. Yes.
Q. That is what you believe?

A. That is my belief.

Q. Mr. McDonald was in an excellent position to report on 542, was he not, Mr. Swanson?

(2356) A. If he was in an excellent position to report?

Q. Yes. He was in position to know the circumstances relating to 542, was he not?

A. Well, I would say he was on the job, probably was. I wouldn't be in a position to say one way or the other, but he was on the job and should have been.

Q. Do you know whether he ever made any report to the Board regarding the circumstances leading to supervision?

A. I think he made his report to the General President.

Q. Did he ever make any report to the Board?

A. Not that I recall now, no.

Q. Did he ever discuss it with you?

A. No, he didn't. Not that I can recall.

Q. Now, when did you first hear of the charges against Underwood, Mr. Swanson?

A. Oh, I can't recall exactly just when I heard it the first time now. I don't remember when I first heard it.

Q. Do you recall from whom you heard about the charges?

A. No, if I knew—I can't answer that question, because my memory isn't good enough to remember.

Q. Did you have any knowledge of the charges, or that charges had been preferred prior to the time of the hearing which was held in New York in September of 1952?

A. Oh, I had some information prior to that. I think I (2357) received some information from Mr. Underwood.

Q. Did you get any other information?

A. Well, I guess I did, but right off I can't recall. It was probably discussed amongst the people, where I was.

Q. What information did you get from Mr. Underwood?

A. Well, I was trying to get his letters. If he had them here, I would be very happy to have them read. I can't locate them. And the information was his idea of what

was going on there and so forth. It covered considerable territory. I can't tell you exactly what the letters contained. But I have been trying all day to try to locate them. Probably he has one, to give you the information. General information.

Q. I just want to know what you recall, Mr. Swanson.

A. No, right now I can't recall exactly what the letters contained. I think one or two letters contained contracts, if I am not mistaken.

Q. Contract with the independent contractors?

A. Proposed contracts between Local 542 and contractors.

Q. Do you remember some of the outstanding features of those contracts?

A. No, I wouldn't remember that, but I know he was good enough to send me the copies of them, that's all.

Q. Do you remember one of the contracts which they were (2358) urging contained a safety code and a pension plan?

A. I know it said something about pensions, but if my memory serves me right, they were having a lot of difficulty about pensions at the time.

Q. Do you approve of the pension plan?

A. I approve of a pension plan, yes.

Q. I mean for the men in your Union.

A. I believe that.

Q. Have you been advocating one?

A. All my life. That is, since I have found out we could get one.

Q. And are the officers of the International Union under a pension plan?

A. They are.

Q. Was it the feeling of the Union generally to press for pension plans?

A. I think that is true. That is, in this locality, at least.

Q. What about the International Union? Wasn't it advocating a pension plan?

A. Well, I think it is; was in favor of it wherever it could be brought about. I think that is true.

Q. What about a safety code? Was that advocated by the International Union, too?

(2359) A. Well, they favor all safety codes that is possible, because we have a very dangerous occupation, and we are much in favor of all the safeties as possible.

Q. A safety code with teeth in it?

A. Yes, we are much in favor of that.

Q. Do you feel the safety code should have teeth in it?

A. Yes, and plenty of them.

Q. Would you think that it was unreasonable if your local were to insist on a pension plan and a safety code as part of their demands against the contractors?

A. No, because we already have that.

Q. Have you got them in your Union?

A. We have a pension plan.

Q. You have got a pension plan in your Union?

A. Yes. A Welfare Plan. You refer to a Welfare Plan. I am talking about a Welfare Plan.

Q. Yes, and a pension plan.

A. Well, no, we have no pension plan except in one branch, but our International has a pension plan. I am referring now to a Welfare Plan that we, in fact, have all our people practically now covered by a Welfare Plan.

Q. I am talking about a pension plan.

A. A pension plan. I am not so familiar with that as I am with the Welfare Plan. I was referring to a Welfare Plan (2360) when you started this.

Q. I see. Let's go back, then, and retrace our steps.

A. Go ahead.

Q. Do you advocate a pension plan?

A. Well, I am in favor of a pension plan if it could be brought about, but primarily our people are more interested in the Welfare Plan.

Q. I see. Now, in the International Union, does it advocate a pension plan?

A. Well, they are doing everything they can to bring one about as quick as possible. They already have a Welfare Plan for the officers.

Q. The International officers are covered by the pension plan?

A. Yes. Not only the officers, but the employees, they are all covered by a pension plan.

Q. Did you receive a copy of the charges which were filed or preferred against Mr. Underwood?

A. Oh, I think I did. I must have received it.

Q. When did you get it?

A. Well, I think it was shortly after they were—if my memory is right, about the time that the charges were preferred.

Q. From whom did you get it?

A. Well, it was sent out from the General Office. I don't (2361) know.

Q. With an accompanying letter?

A. No, I don't recall that there was a letter. It was sent out.

Q. Do you have those charges here?

A. No, I have no record of anything.

Q. What happened to the charges?

A. Your guess is as good as mine. I don't know what happened to all the stuff we clean out here from time to time. Burnt up, I guess, because we have no use for it after we have studied it and read it. Haven't got enough room here to pile it all in.

Q. You have got a big building here.

A. Yes.

Q. Does this Union own this building?

A. Yes, it owns this and five more.

Q. How big is this building?

A. Well, your guess is as good as mine.

Q. How many stories?

A. It is only two stories. There is a basement, a main floor, and this floor.

Q. And your Union occupies this?

A. Yes, sir, and others. We don't occupy the whole building. Downstairs, we have several teamsters organizations (2362) down there. We also have a Welfare Plan downstairs.

Q. When you got the charges, did you get any information about the charges?

A. No, I told you I don't recall if there was a letter with it or not. I can't recall that.

Q. Were you advised when the hearing on the charges would be held?

A. Oh, at the Board meeting. We always know when the Board meetings—the President sent out a statement when the Board meetings will be held, according to the constitution.

Q. Did you discuss the charges with anyone before the hearing?

A. No, I don't think I did. In a general way I might have talked to somebody, but I ——

Q. You met the other Vice-Presidents?

A. Vice-Presidents, yes, sure.

Q. And you met other people. You were in the hotel for how many days before the hearing was held?

A. Oh, I just get there the day before and leave the day it is through. I guess I got there the day before. I think the meeting was held ——

Q. There was a convention going on then, wasn't there?

A. Seventeenth. No, that was the time in New York. Yes, I think there was a convention.

(2363) Q. So how many days were you there before the hearing, the trial?

A. Well, I would have to refer to my records for that.

Q. It was at least several days, wasn't it?

A. I am not so sure. I can get those records. I think it was probably—I can't say definitely. It must have been a few days before, five, six. I don't think it was over that.

Q. In any event, during that period did you not discuss the case of Mr. Underwood with the other members of the Union?

A. With the other Vice-Presidents, you mean?

Q. Whom else did you discuss it with?

A. Well, I don't recall. I guess we talked about it.

Q. It was a topic of general conversation, wasn't it?

A. Oh, no, I wouldn't say so. It was probably with the Vice-Presidents, but our business is probably kept to itself. We don't advertise to the others that there is any trouble. Discuss it with the Vice-Presidents.

Q. There were other members there, too, were there not?

A. Yes.

Q. Carte was there?

A. Oh, yes, at the seventeenth he was there. If you refer to the records, all our names are there. Twenty-five, thirty, I believe.

Q. Do you remember Mr. Halloran?

(2364) A. Mr. who?

Q. Halloran.

A. No, no, not offhand.

Q. You don't know him?

A. Henry?

Q. No. Harry R. Halloran. Didn't you meet him while he was there?

A. Well, I can't place him. Is he a member of 542?

Q. No. Very well, if you don't remember him.

A. I don't, offhand, no.

Q. At least so far as I know, he isn't. Now, who all did you discuss Underwood's case with, if you remember?

A. I don't remember. I think we just talked casually about the case coming up. I might have discussed it with Mr. Underwood, but I don't remember exactly now. I don't remember.

Q. Well, was Mr. Maloney there?

A. Oh, yes, Mr. Maloney was there.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. Wasn't he talking about it, too?

A. Well, not a great deal. He was kind of busy. I recall now that the A. F. of L. meeting, I guess, was there, and he was pretty busy.

Q. But you did talk to him from time to time, did you not?

A. Oh, I always talk to the President when he is around (2365) Generally a pretty busy man.

Q. Did he feel very kindly toward Mr. Underwood at that time?

A. Well, he never said anything to me one way or the other. I think he left that for the Vice-Presidents to judge for themselves. At least, he didn't say anything to me.

Q. Didn't you know how Mr. Maloney felt about Mr. Underwood at that time?

A. You mean at this hearing?

Q. That's right. Before the hearing.

A. Well, he didn't say one thing or the other. I guess he felt—he didn't feel any too good about being—about it, but he never discussed with me any part of it.

Q. You didn't even discuss the charges with Maloney prior to the hearing?

A. No, not as I recall.

Q. Didn't talk to him about it at all?

A. Oh, yes, we might have talked about it.

Q. What did he say about it?

A. Well, I just told you that I don't remember exact words what he said. It wasn't—I personally didn't discuss it with Mr. Maloney that I recall. I might have discussed it with some of the Vice-Presidents around there and other (2366) members, but as far as he was concerned I didn't, that I recall now.

Q. Was Maloney in favor of Underwood?

A. At that time?

Q. Yes.

* * * * * * * * *

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

THE WITNESS: Well, no, I don't understand what it means. I wouldn't be in a position to answer whether he was in favor of him or not. I know there was a time when they were very friendly, extremely friendly.

BY MR. FREEDMAN:

Q. How about at that time?

A. Well, I can't answer for him. I think he will have to answer that.

Q. Well, from appearances at that time.

A. Oh, it didn't appear that they could be too friendly. That is my feeling. I want to say, however, whether it is off record or not, that there was a time they were extremely friendly. Previous to that.

Q. But that friendliness was gone at the time preceding this hearing, is that right?

A. That what?

Q. That friendliness was gone on the occasion preceding this hearing?

(2367) A. It would appear to be that way. That is just my opinion. I will let him decide that.

Q. Was there anybody at the time there who was talking about the Underwood case among the members of your Board or anyone else in your Union?

A. Well, I can't answer that exactly. They might have discussed it amongst themselves. I wasn't all over. I had—I don't recall—I think I heard it discussed. I wouldn't deny that, but where and when, it was the general talk of some of the Vice-Presidents, but I don't recall what was said and so forth, because first of all I don't remember exactly what might have been said.

Q. Now, when did the hearing start?

A. On the seventeenth.

Q. Of September?

A. Yes, I think that is—I get that record from the book there, the seventeenth.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. Prior to the time the hearing started ——

A. I think it was the seventeenth—oh. Sir?

Q. Prior to the time the hearing started, what was your view of the charges against Mr. Underwood?

A. Oh, prior to the hearing or prior to the charges?

Q. Prior to the hearing. After the charges were filed.

A. I had nothing against Mr. Underwood up to the time that (2368) the charges were preferred against him. He was very friendly.

Q. You had had some discussions?

A. With him?

Q. Yes. What were your views regarding the charges?

A. I think any discussions I had with Mr. Underwood was friendly.

Q. Well, now ——

A. Extremely friendly.

Q. —discussions you might have had with others regarding the charges. What were your views regarding those charges?

A. I didn't discuss the question with anybody so far as Mr. Underwood was concerned. I probably knew Underwood at that time as well as the rest.

Q. You mean you didn't discuss the charges filed against Mr. Underwood with anybody prior to the hearing?

A. Yes, I might have talked about it, but I misunderstood your question. What my feeling was towards Mr. Underwood, is that what you want to know?

Q. No, I asked you—I think you have said that you did discuss the charges with others prior to the hearing.

A. Well, naturally, would talk about it.

Q. All right. Now, you talked about it with the other members of the Board and with other people.

A. Well, I think I did, yes.

(2369) Q. Did you discuss it with Carter? Was he one of those that you talked to?

A. Let me see. No, I didn't talk to Carter until he was

present at the case. I didn't discuss it with him. I don't think he came in until later, and I never had any conversation with Mr. Carter in regard to this case until after the trial.

Q. Now ——

A. And very little then.

* * * * * * * * *

Q. All right. What was your view regarding those charges so far as Underwood was concerned?

A. Well, I only had—I got my views set after—during the trial, as to the evidence produced there. That is where I got my opinion from and views, from what took place during the hearing.

Q. Now, let us talk about that.

A. That is all right with me.

Q. Who was present at the hearing?

(2370) A. Well, the entire Board was present and many more, whose names I can't recall exactly, but they are in the book there. Mr. Carter was there. I think Mr. Underwood was there, and seven, eight of his associates, whose names I can't recall at this time.

Q. Who presided?

A. Mr. Delaney presided.

Q. And how did he happen to preside?

A. Well, the President said he was involved in it, and he didn't want to have anything to do with it, so he relinquished the chair to a Vice-President.

Q. Why should it be Mr. Delaney?

A. Well, that is up to—I have no way of reading Mr. Maloney's mind.

Q. Wasn't it up to the Board to determine?

A. No, it is—we don't question that. If the President requests any Vice-President to sit in, they generally comply with his request.

Deposition of Victor S. Swanson as on Cross-examination. Offered by Plaintiff.

Q. Who is the first General Vice-President?

A. We have Mr. Welsh.

Q. From where?

A. Up at Boston.

Q. And who is second?

A. I think that is John McDonald, isn't it?

(2371) Q. No, McDonald is third.

A. He is third.

Q. Who is the second?

A. Let's see. It is Emhart—Imhahn, isn't that it? We paid so little attention to these numbers.

Q. And McDonald is third. What else?

A. I am way down the list. I am sixth.

Q. Where is Delaney?

A. Delaney must be fifth, isn't he? Either fourth or fifth. I plead ignorance, because I pay so little attention to numbers.

Q. Didn't the Board take any action in selecting their own chairman when Mr. Maloney stepped out?

A. No, they didn't. In fact, I don't recall that question ever raised at any time.

Q. Nobody questioned it, you mean?

A. When the President decided to step down, why, he has, I presume, usually pick the one that is nearest to him. I don't know just exactly. I am unable to answer the question.

Q. Who was it who picked Delaney?

A. Well, Maloney, as far as I know. The President picked him.

Q. Was counsel for the Union there?

A. Sir?

(2372) Q. Was counsel for the Union there?

A. Counsel—no, we had—the counsel, Mr. Thomas, was there as a witness and as a member of the Local 18.

Q. Was he there?

A. Yes, he was there.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. And he is your general counsel, is he not?

A. Yes.

Q. Did he participate in the trial?

A. No, he was there as a witness. In fact, he was the first witness, that I recall.

Q. What did Mr. Thomas do?

A. What did he do?

Q. Yes. You say he was a witness.

A. Yes.

Q. What was he a witness for?

A. For?

Q. Yes. I mean what evidence did he give?

A. I think he was a witness against Mr. Underwood, if I am right there.

Q. Yes. What evidence did he give?

A. Well, he testified to the charges and so forth.

Q. What other evidence did he give?

A. Well, that's all.

Q. Did he make ——

(2373) A. You want me to tell you exactly what he said?

Q. As closely as you can remember.

A. Well, first, the charges were read, and then I believe that Mr. Thomas was called as a witness, and he—I think he stated something in connection with the case, that Underwood had accused the General President of defamatory language and so forth, and that he had—and that the matter had been even published in the papers; that Mr. Underwood had withdrawn it with prejudism and so forth. I don't recall, something along those lines, I guess.

Q. Anything else you can remember?

A. Not right now.

Q. Do you remember what he meant when he said withdrawn with prejudice? Do you remember what he was talking about?

A. Well, he had drawn the case.

Q. The lawsuit?

A. The charges, the case. As I understand, from the case. The case had been filed, and it was withdrawn with prejudice.

Q. Did he tell you that the International Union was a party to that stipulation withdrawing with prejudice?

A. I don't recall him saying that, but he might have.

Q. And what significance did he attach to withdrawing it with prejudice?

A. Well, I don't recall what significance he attached to it (2374) now. I don't recall that.

Q. What else did he testify to, if you remember?

A. Well, that is all I can recall exactly, now. Word for word, I don't know.

Q. In other words, from what you said, all that Mr. Thomas did was simply to state that the lawsuit had been brought, and that it had been withdrawn with prejudice. Is that about what you are saying?

A. Well, that is part of what he said, yes.

Q. Can you remember anything else?

A. Not right now.

Q. Did Mr. Thomas make his position clear, so far as the guilt or innocence of Mr. Underwood?

A. No, I think he asked the questions—answered questions. I don't think there was a question of the guilt involved.

Q. What questions was he asked, and what were his answers?

A. Well, that is all I recall, I told you now.

Q. You don't remember any questions?

A. No, I don't remember.

Q. Didn't he express his views regarding the guilt or innocence of Mr. Underwood?

A. In regards to Mr. Underwood?

Q. Yes. He was the man on trial, wasn't he?

A. I don't think—he testified but a very short time. I (2375) don't recall him making any statement in regards to Underwood, except just the charges, and that's all.

Q. Didn't he make it clear to the Board that Mr. Underwood should be convicted?

A. I don't recall anything like that. He was just a witness there at that time. I don't recall. He might have, but I don't remember if he did.

Q. Was Mr. Underwood given counsel?

A. If he was given a counsel?

Q. Was Mr. Underwood permitted the right to have counsel at that meeting?

A. Yes, he had a right to have any counsel, as long as he was a member of the International.

Q. Did Mr. Underwood at that meeting ask for an attorney?

A. He did, so far as I remember.

Q. And what was the ruling?

A. I think he asked for Mr. Freedman, if I am not mistaken.

Q. Yes. And what was the ruling?

A. I think the ruling was it was against the constitution to have outside attorneys appear there. They had to be members of the International.

Q. Who made that ruling?

A. I think it is in the Constitution.

Q. Sir?

(2376) A. Sir?

Q. I say, who made the ruling?

A. Oh, the chair at that time was Delaney was in the chair.

Q. You say it is in the constitution?

A. I think it is in there.

Q. Will you point to the part of the constitution?

A. If the attorney will help find it. It is in there some place I know.

Q. Are you sure about that?

A. Well, we will look it up for you. We will find it.

Q. Well, do you want to take a look in the constitution and see whether you can find the provision?

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

A. I think that I would be—supposing you make a note of that. That is one of the things I have to find tonight.

Q. Let us get it now, because you have answered the other questions.

A. I would ask the attorney where that section is, and then we will find it. Is it in there?

* * * * * * * * *

(2377) Q. Are you sure you found it?

A. Yes. It is very difficult for me to read, for your information.

Q. I see. You found it now, and you are referring to Article XXIII, Subdivision 7.

(2378) A. Page 100.

Q. Section (n), is that right?

A. That's right. Page 100.

Q. The portion which counsel pointed out to you.

A. Yes. Now, he didn't—yes.

Q. Will you look at Page 99 and start at the beginning of that article where it is marked "Trials", which is related to that article that you just referred to, and see whether or not that does not refer to trials only in the local unions and not before the International?

A. You want it read, you say? You want me to read it?

Q. You can read it quietly. You don't have to read it aloud.

A. I can't change the constitution.

Q. Nobody is asking you to.

A. It is in there. This has been part of the constitution for some forty-five years, I think now I am getting to know.

Q. That refers to trials in the local unions, does it not?

A. My idea would be it applies to all trials, whether it is International ——

* * * * * * * * *

(2380) Q. Mr. Swanson, how frequently did the Executive Board try any other individuals, or on what other occasions that you know of did the Executive Board conduct trials of other individuals?

A. Oh, the records would indicate to show what trials there were.

Q. Do you have any recollection of them?

A. No, not very many. I don't think—you asked how frequent. There are not very many trials held.

Q. I am asking you to tell me whether or not you have any recollection of any other trials conducted by the General Executive Board?

A. There have been other trials, but I have no recollection of what transpired at each and every trial, if that is what you wanted me to answer that.

Q. When was the last one prior to the Underwood case?

A. I say I can't recall when that was. I would have to read the records.

Q. Do you remember who was tried before Underwood?

A. No, I don't, right offhand I don't. I don't specialize in trials, myself; if I read the records I would be able to tell you, but I don't. The records should speak for themselves.

(2381) Q. Well, now, let us start at the beginning, and I would like you to tell me what happened in that trial from the time Mr. Delaney opened the session to the time it was concluded.

A. You want to know everything that happened?

Q. That's right, everything that was said.

A. You want to know everything that I remember, is that it?

Q. Well, that is all that I can ask you, and that is what I am asking you.

A. Well, first, I have already told you that Mr. Thomas was the first witness. First we had—Mr. Delaney was in the chair. The charges were read. The first witness was called, Mr. Thomas.

Deposition of Victor S. Swanson as on Cross-examination. Offered by Plaintiff

Q. Who read the charges?

A. I think the Secretary. I am not saying for sure.

Q. O. K. Go ahead.

A. I think Mr. Gramling read it. I am not sure of that, but I know they were read, because—and then after Mr. Thomas testified, Maloney testified.

Q. Now, what did he say?

A. Well, he denied that the accusation—he said it was all untrue, the statements were not facts.

Q. What statement?

(2382) A. That Mr. Underwood had made in his—had filed against him, the case against him. The charges. Then several questions were asked.

Q. That Underwood had filed against him?

A. Well, the charges against, the accusation that he was tried for. Mr. Underwood was tried for certain reasons, and he had made in his complaint—he had charged the President of many things.

Q. What, do you remember?

A. Well, the record shows them. The record shows. And the President said they were untruthful.

Q. Did he relate what they were, and did he deny them specifically?

A. Read them. You have got them there.

Q. I am asking you what he said?

A. I just told you he said they were untruthful. They were not facts.

Q. What did he say were untrue?

A. I am just telling you that. That is what he said. He just testified a very short time. He was asked several questions by certain groups. Cross-examined by them. And that was all there was to it, so far as he was concerned. He left the chair, and I don't know whether he left the (2383) room or not. He set back there some place. Then after that—you want to know all of it?

Q. Yes.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

A. Then after ——

Q. What else did Mr. Maloney do?

A. Let me tell you the story. Then after Maloney got through, then—after he had been cross-examined, then several members of Mr. Underwood's group made certain statements. I don't recall their names.

And then Mr. Underwood took the floor. He had a large package of papers, and he said—he says, "All this has been read by the Board." He says, "There is no use for me to read that now," he said.

And he says—he made, I would say he talked ten, fifteen minutes, something like that. And then he was asked by the President if he had anything else to say.

"No," he says. He says, "There is no use for me to read these papers." He says, "You have all read it." He says, "That is my case."

And he was asked by Delaney, "Have you anything else?"

"No," he says.

"Well," he says, "are you satisfied you have had a fair trial?"

(2384) And Mr. Underwood said, "Yes".

That is the only thing that I remember of it. That was the only thing that really transpired.

Q. These things you remember very clearly, don't you?

A. Oh, yes. I remember those statements.

Q. Anything else you remember?

A. Right off, I can't remember much of it. I didn't take any notes. I just set there and listened to it.

Q. Did you examine the answer which Mr. Underwood filed?

A. Oh, I read them.

Q. To the charges.

A. I read them.

Q. Did you consider them serious?

A. Oh, yes, I did. I consider everything seriously.

Q. Do you remember what that answer contained?

A. No. I think you have a copy here, counsel gave it to you, but I don't remember all that, no.

Q. Did Mr. Maloney answer each and every one of those charges specifically ——

A. No ——

Q. —or the charges in the answer?

A. I don't think he was asked the question—I don't know—I don't think—every charge—I am not sure (2385) he did. I don't recollect what happened. He was on the witness stand. He was just testifying. He was asked questions.

Q. Did anybody on the Board ask him any questions?

A. I know I didn't, but anybody could have asked him questions.

Q. But did anybody on the Board ask him questions?

A. I wouldn't say. I didn't. I don't know what anybody did or not, but anybody could ask him questions.

Q. I am asking you whether any member of the Board asked him questions?

A. I told you I don't remember whether they did or not. I have no recollection. I know that certain members of Mr. Underwood's people asked him questions.

Q. You remember they asked him some questions, but you don't remember whether any member of the Board did?

A. Yes.

Q. At the time you read the answer to the charges filed by Mr. Underwood, you had that in front of you as Mr. Maloney was talking, is that right?

A. Oh, I don't know what I had in front of me.

Q. You had them in your pocket, or you had them in your possession?

A. I don't know. I had read it.

(2386) Q. Didn't you consider it important to ask Mr. Maloney specific questions about them, to find out if anything in there was true or not true?

A. I don't know that is anything in this case here. What

I considered most important, since you asked me the question, is there was no contradiction of what the charges were. Nobody denied them. Mr. Underwood said that he had signed these charges and there they stood. What could you do? You had no choice. He admitted right there that he had signed it, that his signature is on there, and it is still there. What else could I do?

Q. So that no matter how much justification there might have been as outlined in the answer, so far as you were concerned, you were going to render a verdict of guilty so long as he signed the complaint?

A. Well, unless he denied them. Then there would have been some reason for it. He never denied they were his charges. He signed his name on it. What could you do?

Q. Well, didn't you want to inquire to find out whether the charges were justified? Didn't that make any difference to you?

A. I thought that was his job, to justify them. He might have said something about some attorney wrote them, but he signed it, he said. What could I do?

(2387) Q. Was it your position that he had to disprove the charges?

A. No, they had proved them first. And then he answered it, but he didn't answer the charges, because he admitted it.

Q. I take it, then, the only thing you considered was the fact that he signed a complaint against the International Union putting it into court, and that was sufficient?

A. No, I considered that he had violated his obligation to the International when he filed charges against the President as he did. He did not exhaust all his remedies in the Union first before he went into court. We in the Union feel that they should do that, that they should exhaust the remedies in the Union and then go to the court, and then file it up there, but just to do the first thing first.

Q. Was that the reason for your decision?

A. I have already told you my decision—the reason for my decision, that it was never denied. What else could I do? I would like to ask you a question: What would you do?

Q. You are the one who has to answer the questions.

A. I appreciate that.

Q. Maybe on some other occasion you will have the opportunity.

A. No.

(2388) Q. We are trying to find out the facts.

A. I am giving it to you here.

Q. I take it, then, that the reason you found him guilty was because you found that he had brought this lawsuit against the International without first exhausting his remedies inside the Union, is that right?

A. I think that is one ——

* * * * * * * * *

(2389) Q. Do you want to answer that question, please, Mr. Swanson?

A. Yes, that is one of the reasons. You did not deny any of the charges. And there was no choice but to find him guilty, so far as I was concerned.

Q. You say that was one of the reasons. What were the other reasons?

A. Well, that was the prime reason—that first he had—if he did not deny any of the charges, and the charges was contrary to our constitution, that is all that was needed. He didn't deny them. He admitted that he had, that those was all charges ——

Q. He admitted what?

A. He admitted he signed the charges.

Q. He admitted he had signed the charges?

A. Yes, it was his ——

Q. I don't understand. He admitted he had signed what charges?

A. Accusation of the president. Accused him of wrongdoing, (2390) of everything that is bad. I guess that is the proper word.

* * * * * * * * *

(2391) Q. Are you all through?

A. I am through. That is, if you are.

Q. Well, I did not expect anything else, after that explanation.

A. The answer was the same. It was just a matter of interpretation.

Q. Well, now, perhaps we can get just as clear an answer from you on the basis—or, regarding the basis for the conviction. I asked you before—strike that out, and let me rephrase it, please.

Is it not true, then, Mr. Swanson, that Mr. Underwood was found guilty simply because he signed that complaint? Is that right?

A. That is not correct entirely, no.

Q. Well, what is correct?

A. It is correct that he had accused the General President of certain things that were wrongful, and that ——

Q. You mean in the complaint?

A. And that he had gone to court contrary to the (2392) constitution, and that he instead of exhausting all his remedies in the Union, he jumped by that and went to court and accused the President of doing everything that wasn't right. That is about the nearest word that I can get.

Q. I just want to be sure I understand the basis for your own conclusion. You say that you found him guilty because he signed the complaint and he did not exhaust the administrative remedies in the Union, is that right?

A. That is one of them.

Q. What else do you have? That is two of them, isn't it?

A. All right. So we get this very clear. I want to get

it clear in my mind, so that I know what—when Mr. Underwood testified after the charges had been the occasion—witness had testified against. He got up then. He was the last witness, I remember now, and he admitted everything that was in there.

Q. Everything in the complaint?

A. Well, he admitted what he was charged with. He admitted all that.

Q. What did he admit, specifically?

A. He admitted that he had done these things that I am saying. He had accused the President of all kind of defamatory things, and that he was a crook, and everything, in other words.

(2393) And then instead of airing his case in the Union of the International, he jumps over and goes to the courts before he exhausts his remedy as in the constitution. He violated the constitution.

Q. When you say he admitted it, you mean by that that he by signing the complaint admitted it?

A. No, he did not deny it on the floor. I didn't hear him deny it.

Q. Well, now, what are some of these things you are talking about? You say he called, one of the terms, he called Maloney a crook?

A. Well, I said he used a lot of defamatory—I wish you would get that petition up and read it.

Q. Did you read it at that time?

A. Yes, sure, I read it.

Q. Didn't you regard it as a rather serious complaint?

A. When he charged the President?

Q. Yes.

A. Yes, I should say I did.

Q. When Maloney was on his feet, why didn't you ask him about those charges?

A. I think the President spoke for himself. He denied the charges that Mr. Underwood had filed against him. He

denied those charges, and Mr. Underwood's people asked (2394) Maloney questions, and he answered the questions. They made certain statements.

Q. Did he take any individual allegation and deny it?

A. No, I don't know that he did that.

Q. How did he deny it? How did he make his denial?

A. Well, stated they were not true, they were not facts.

Q. You mean he just said that the complaint was false?

A. That is correct. That is one of them.

Q. And that is as far as he went?

A. I didn't say that is as far as he went. I said that is one of them.

Q. How far did he go?

A. Well, I haven't—I don't have recollection of everything that was said here. I think the minutes speak for itself pretty much. It satisfied the Board, and there is no question in the Board any more. It was a one-sided affair.

Q. One of the things that was said was that Mr. Maloney conspired with Mr. McGrath. Do you recall that?

A. No, no, I didn't hear that.

Q. You don't recall that?

A. No.

Q. Did Mr. Maloney deny that he talked to Mr. McGrath?

A. Well, I didn't hear anything like that. If that was discussed there, it went over me, or I have no recollection (2395) now. I can't recall that at this hearing. You are now talking about when the hearing was going on?

Q. We have been talking about that all of this time. Isn't that your impression?

A. Yes. As far as this case ——

Q. You remembered some of these other things very specifically and distinctly. How come you can't remember the things which are really important and which would have a great bearing in your judgment, according to your own testimony?

Deposition of Victor S. Swanson as on Cross-examination. Offered by Plaintiff

A. I have a fairly good memory at the time. It depends upon what the occasion might be. I don't remember anything that is not important. As a rule I remember very important things that happen in life.

Q. Don't you remember that one of the allegations of the complaint was that Mr. Maloney conspired with Mr. Halloran and Mr. McGrath?

A. No, I don't remember that.

Q. You don't remember that?

A. No.

Q. Don't you think that was serious?

A. It would have been serious if it was a fact, yes.

Q. Well, now, why didn't you ask Mr. Maloney if it was a fact?

A. I didn't consider at the time that it was necessary to (2396) ask him. He had denied all the charges, and consequently, that cleared that matter up.

Q. Would it have made any difference in your judgment if you knew he had conferred in his office with Mr. Halloran and Mr. McGrath?

A. Oh, it might, yes, if I had known that he had done something wrongful, yes, I should say it would.

Q. Would it have made any difference to you if you had known that Mr. McGrath and Mr. Halloran came to see him and talked to him about this without Mr. Underwood or the local knowing anything about it?

A. I don't know anything about that.

Q. If I were to tell you it is true, would it have made any difference in your judgment?

A. Well, I couldn't accept that as a fact from you.

Q. Well, assume for the moment that it was a fact. Would it have made a difference?

A. It would have made a lot of difference if it was a fact, but I cannot accept it from the attorney on the other side.

Q. I am posing a hypothetical question, assuming it is true, would it have made a difference in your judgment?

A. It would have made a difference if there was anything done that was not right, it would have made a lot of (2397) difference in my mind, absolutely.

Q. These things were set forth in the complaint.

A. Yes.

Q. Why didn't you ask Mr. Maloney about them specifically: Did you meet with Halloran, and did you meet with McGrath?

A. No.

Q. Why didn't you ask him that?

A. No.

Q. Did you ask him that?

A. Just a minute. Don't get excited. I am guided in my own conscience and my own mind when I hear evidence, and I am guided by that entirely, and ——.

Q. Well ——

MR. WOLFE: Just let the witness finish the answer.

BY MR. FREEDMAN:

Q. Did you want to finish?

A. That is the only way I can determine anything in life. I hear the evidence, and then I weigh it carefully and then I decide.

Q. That is just what I am talking about. You wanted to know all the evidence, didn't you?

A. I always seek all information I possibly can of importance.

(2398) Q. Why didn't you ask Mr. Maloney while he was testifying or giving his statement whether he did meet with McGrath and Halloran?

A. Well, I will answer your point. I wasn't on trial, but Mr. Underwood was on trial, and he was on the one that should ask those questions, not myself. I wasn't cross-examining our own President, because I don't think that

was a legal way to do it—proper way to do it. I think that should have come from the other side. Don't you think so?

Q. You think it should have been brought out?

A. I think that the opposition, they felt they had a justifiable case, they should have brought it up then. There were six, seven or nine people sitting there, and they were all open-minded.

Q. But no lawyer for Mr. Underwood.

A. Well, I am just—he could have had—the only lawyer that the other people had was a member of our Union. But that isn't something that I want to discuss with you, whether there was a lawyer. That was the constitution. That was in the constitution laid down by the membership. Whether it is right or wrong, I am not even going to agree to that.

(2399) Q. Did you know that Mr. Maloney had been relying on Carter from 1948 to the latter part of 1952?

A. No, I didn't know it.

Q. And that he distrusted McDonald?

A. I did not know that. I don't know it yet.

Q. Would it have made any difference in your judgment if I told you that Carter was called in and that he entered into negotiations with the employers on the one hand at one occasion, and then with—and attempted to force a contract on the local union?

A. Would it make any difference to me?

Q. In your judgment.

A. Well, I am unable to answer that question. There would be more to it than just that. I would have to have all the facts, and then I don't know what I would do. Naturally, if I saw that there was anything wrong and knew it for sure, then that would make—that would affect it. I base all my decisions on what I think is right in fact, not imagination.

Q. These are things which were alleged in the complaint, were they not?

A. There were some of them, but I repeat again, Mr.

Freedman, that that was the duty of the other side to present.

Q. Well, you mean it was up to him to disprove it?

A. Well, it was up to Mr. Underwood to disprove it?

(2400) Q. Yes, to disprove the charges?

A. Well, I think that after the evidence had been presented against him, that he was there to defend himself, wasn't he? Wouldn't that be the—as I see it. He was there to defend himself, and he should have brought out anything that he had, and not close the case and say "I am satisfied," unless he was satisfied.

Q. He asked for the privilege of a lawyer, didn't he?

A. Yes, he wanted Mr. Freedman there, as I recollect.

Q. And he was denied that privilege?

A. He was stated the constitution provided that only members of the organization can do it. That is all I know. This constitution is written by all the members.

Q. If you wanted to know all of the facts and you wanted your judgment to be fair, why didn't you ask these questions when you found that no one else asked them?

A. Well, I have no way of telling why I didn't now. I was satisfied that Mr. Underwood was there to defend himself. It wasn't my job to defend him there. I was there to hear the evidence and then pass judgment the best way I knew how based on facts. Now, I certainly think that Mr. Underwood was qualified to defend himself.

Q. Do you have any recollection of any of the other things that were mentioned in this complaint?

(2401) A. No, not now. Not offhand, no.

Q. Are you able to state whether any other members of the Board asked any questions regarding these allegations of the complaint?

A. To my best recollection, I don't think any did—anybody asked any questions on the Board. They might have, but I can't answer the question definite. I know I didn't.

Q. How long did the hearing last, altogether?

A. Well, I don't know. I should say two hours, probably. I don't know exactly. Time passed awfully fast.

Q. How long did Mr. Maloney speak, if you remember?

A. Well, I don't know—I don't think he was on the stand over ten minutes, at the most. I can't state exactly the time that he was on.

Q. If I told you that Mr. Maloney himself said about three minutes, would you say that was wrong?

A. No, I wouldn't contradict that at all, because it was a very short session. I wouldn't argue against that at all, if it was only three minutes.

Q. And how long was Mr. Thomas—was he on the stand?

A. Oh, yes.

Q. Was he sworn?

A. He was testifying. He was asked some questions. I think he was there somewhat longer than Mr. Maloney. Now, (2402) I can't give you the exact time, but I think he testified somewhat longer than Mr. Maloney did.

Q. Did anybody else testify against Mr. Underwood?

A. Well, I think Carter did. Didn't he? Carter? Carter was there, but towards the last, I have a faint recollection that he made some statements.

Q. What did he testify to?

A. Well, in connection with the case, but I don't exactly know what he said. I think somebody else should have to testify to that—have more recollection. I can't.

Q. You don't remember at all what Carter said?

A. No, not anything that would be of definite value to this case.

Q. When Carter was testifying, you had the complaint before you, did you not?

A. Oh, yes, we had it ——

Q. Did Carter testify ——

A. The charges had been read, and Maloney and Mr. Thomas—Mr. Maloney and Mr. Thomas had testified, and if I recollect correctly, Carter was last. I think he was the very last witness. I can't tell you exactly.

Q. Carter was mentioned in the complaint, too, was he not?

A. You mean he was included in the complaint by Mr. Underwood, is that it?

(2403) Q. That's right.

A. I guess probably if you look at the record you will find out. I think he was. I am not sure. He must have been. Yes, I think so.

Q. Didn't you consider it important to ask him any questions about the truth of the allegations of the complaint?

A. I will try to make my position clear. I would like to answer your questions, but I will have to repeat the same thing again. I sat there as one member of the Board. I listened to everything that was said, and I weighed over the evidence. And the last testimony was Mr. Underwood himself. He is asked a question, "Are you satisfied?"

He said, "Yes." He said, "I have this document here and you have all read it. That is my defense."

And he talked, I would say ten or fifteen minutes he stood up. Now, time passes, sometimes very deceiving. And then he was asked, the last thing that I remember was, "Will you say you had a fair trial?"

And Mr. Underwood said, "Yes", and he won't deny it. Whether he believed or not, that is up to him, but he said yes. And what would I start then to ask the questions? It was over. I am telling you just the fact.

Q. Don't you feel you had the right to ask questions?

A. I think I have a right to ask questions any place I go.

(2404) Q. Why didn't you at that point?

A. Well, because I felt it was a one-sided affair.

Q. In what respect?

A. What could I gain by asking the questions when the defendant himself has pleaded guilty, and says that is what he did? What do you want me to do?

Q. That he signed the complaint.

A. Well, it is like signing a note.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. That is what he admitted. That is the only thing he admitted, isn't that right, that he signed the complaint?

A. I don't know. He said, "This is my statement." I don't know if he wrote it. I think he said, I think probably the attorney wrote it. Probably you wrote you. I don't know about that, but ——

Q. But the point is ——

A. But I have a faint recollection that there might be words he made—attorney's words. But there wasn't anything I could do as a Vice-President but do what I do. When the defendant himself says "I am satisfied I have had a fair trial," and that he spoke out very loud and every man in the hall could hear, and he was extended time—any more time—I don't know what else I could do.

(2405) Q. In other words, when he admitted he signed the complaint, so far as you were concerned, that was the end of it?

A. Well, I don't think that is a fair question. I don't know how to answer that question. I have tried to explain to you my position. I can't change my position as I see it.

Q. Was it or was it not true you were only interested in determining whether or not he signed that complaint?

A. No, I was very much interested in this case, for your information. I had known Mr. Underwood a long time as a friend. And I say that without fear of any contradiction. And here he deliberately admits and says, "I have had a fair trial." What else could I do? I couldn't do nothing else but what I did. As I am now speaking as one member, and I wasn't interested in anybody else. I was just interested in my own vote.

Q. Now, you convicted upon the basis that he signed the complaint.

A. You say—I don't know—I was going to say Your Honor. I was going to say how can I explain this any better than I have done? I have done the best I can to give you my honest statements here. I don't know if I should sit here

all night and say it over again or not. I will have to do it if you say so.

(2406) Q. I think you ought to start sooner or later in giving direct answers to the questions.

A. Well, I think I have done that as direct as it is humanly possible for me to do.

Q. Did you convict him because he admitted he signed the complaint?

A. I don't think that that has any bearing in this case. I convicted him on everything that was brought up. What else could I do, when he admitted he done it?

Q. When he admitted he did what?

A. He done what he was charged with. In accusing the President by doing something that he shouldn't do.

* * * * * * * * *

Q. That was your answer. Were you finished?

A. No, I wasn't altogether finished. I had answered it previously. You asked—may I get back a little bit?—Was I asked a question why I convicted Mr. Underwood? Is that the question?

Q. The last question—you can go back to that in a moment, but the last question was whether or not by saying that he (2407) admitted to what he was charged with you are talking about the allegations contained in the complaint, is that right?

A. I am talking about the case that Mr. Underwood filed against the General President when he accused him of everything under the sun.

Q. That's right. That is the complaint.

A. The complaint.

Q. And the fact that he signed that complaint is the basis on which you rendered a conviction?

A. The fact that he not only signed it, but wrote it, and also that he ——

Q. Endorsed it, is that what you mean?

A. And also that he had failed to comply with the constitution. He hadn't exhausted his remedies in this book which he is part of. And he jumped over that and he went to the court. And he admits that that was the fact. That is what he admitted. And he didn't deny it. He said, "I had a fair trial. I am satisfied." What do you want me to answer now, Mr. Freedman?

Q. I didn't tell you I wanted you to answer anything. All I am trying to get from you is some honest testimony here.

A. I am trying to answer the questions. I will answer anything you ask me, if I know how to answer—if I know it.

Q. So that when you say he admitted it, you mean that he (2408) admitted to all of the things which were alleged in the complaint; by signing it he admitted to all of the things, is that what you mean?

A. What I mean, so I get this clear. I mean that when Mr. Underwood said to the presiding officer—that happened to be Delaney—that he was satisfied, that he had a fair trial. I say then that he had completed his testimony, and I had to then decide on the evidence as being presented. I had no choice. That is what I mean.

Q. I don't understand what you mean when you say you had no choice. You had no choice then to do what?

A. My duty there was to weigh the evidence and render a verdict accordingly. I was only responsible for myself, nobody else.

* * * * * * * *

Q. So that I understand correctly, Mr. Swanson, you felt that you had no alternative than to find him guilty, because, one, he had signed the complaint, including all of these things you talked about; and, secondly, he had not ex-

hausted (2409) his remedies within the Union, is that correct?

MR. WOLFE: No, that is not what he said.

THE WITNESS: That is not what I said. That is the farthest thing from what I said.

BY MR. FREEDMAN:

Q. What in addition to that impelled you to find against him?

THE COURT: All right. Down at the bottom.

BY MR. FREEDMAN:

Q. If that is not correct, I would like you to tell me in what respect it is not correct?

THE COURT: The answer is at the bottom of the page.

THE WITNESS: I want to know the question. Then I want to refer back to another question. The same question again. I will give the same answer every time you ask, as long as I sit here, whether you go to court or any other place. I will tell you the truth.

MR. FREEDMAN: Then the question was repeated (2410) at page 203:

("Q. So that I understand correctly, Mr. Swanson, you felt that you had no alternative than to find him guilty because, one, he had signed the complaint including all of these things you talked about; and, secondly, he had not exhausted his remedies within the Union, is that correct?")

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

THE WITNESS: That has been answered a dozen times before.

BY MR. FREEDMAN:

Q. You said it was not correct before.
A. Whatever the answer was before is still my answer.
Q. You said your answer to that ——
A. Well, then, if I have answered it ——

MR. FREEDMAN: His answer to that question was that it is not correct. Am I correct in that, Mr. Reporter?

(The answer of the witness was repeated by the reporter as follows:

"A. That is not what I said. That is the farthest thing from what I said.")

BY MR. FREEDMAN:

Q. Now, in what respect is that statement not correct?
A. If you go back a few questions before, my complete answer ——
(2411) Q. Well, I am asking you now.
A. How do you want me to answer to satisfy you? I am not going to do it.
Q. You don't have to satisfy me. I just want the truth here.
A. I have answered as I know it.

* * * * * * * * *

(The question was repeated by the reporter as follows:

"Q. So that I understand correctly, Mr. Swanson, you felt that you had no alternative than to find him guilty because, one, he had signed the complaint including all of

these things you talked about; and, secondly, he had not exhausted his remedies within the Union, is that correct?")

THE WITNESS: I never made that statement. I never said I had no alternative. I had alternatives, because (2412) I was guided by the evidence there, entirely, and I had a conscience that guided me to do it, see.

BY MR. FREEDMAN:

Q. Did you find him guilty on the basis of those two factors that I outlined there?

A. Maybe it would be better if I answered the question once more so you would be satisfied. If I understand the question right, I am asked why I found Mr. Underwood guilty.

Q. That is not the question.

A. Oh, well, then, I am mistaken.

MR. FREEDMAN: Will you please read the question back again.

THE WITNESS: Well, then I don't know.

BY MR. FREEDMAN:

Q. You listen to this question, Mr. Swanson.

A. I withdraw my ——

Q. You listen to this question.

A. Excuse me.

(The question was repeated by the reporter as follows:

"Q. So that I understand correctly, Mr. Swanson, you felt that you had no alternative than to find him guilty because, one, he had signed the complaint including all of these things you talked (2413) about; and, secondly, he had not exhausted his remedies within the Union, is that correct?")

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

MR. FREEDMAN: Then his answer was repeated by the reporter:

("A. That is not what I said. That is the farthest thing from what I said.")

MR. FREEDMAN: Now, "The Witness:"

THE WITNESS: Do you want another answer? I will again try to answer.

MR. FREEDMAN: Then I asked the reporter to repeat my last question.

(The question was repeated by the reporter as follows: "Q. What in addition to that impelled you to find against him?")

THE WITNESS: In order to answer that question I would like to give you the whole story of the case, as I see it on this question.

(2414) BY MR. FREEDMAN:

Q. Don't make the same speech you made before, now, Mr. Swanson. Just answer the question.

A. I am going to answer it my own way, whether you like it or not, because I am telling the truth. Now, here it is. I have been asked why I found Mr. Underwood guilty. Here is the reason for it.

First, Mr. Underwood had filed charges against the General President, accused him of a lot of wrongful doing. The matter was published in the newspapers.

Mr. Underwood, I believe, withdrew it without—with prejudism. The case come up. Mr. Thomas testified. Mr. Maloney testified. First, the charges were read.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Finally, Mr. Underwood testified. And Mr. Underwood in defending himself did not deny that he had accused the President of these things. He did not deny that he had jumped over the constitution and gone to court. And he stated that he had had a fair trial, and that was it. He was satisfied he had had a fair trial.

That is why I found him guilty.

* * * * * * * * *

(2417) Q. Now, when did you reach your conclusion, Mr. Swanson?

A. After all the evidence were in.

Q. Immediately afterward?

A. Sir?

Q. When after the evidence was in?

A. I understand the trial when I voted? Is that it?

Q. Yes.

A. Well, after all the evidence were in I had—my conclusion was reached.

Q. The same day?

A. After—that is—you are talking about my mind. No, we had an Executive Board meeting one or two meetings afterwards, when we took the vote where we decided, but you asked me when I made up my mind. Am I supposed to understand it in that way?

Q. That's right.

(2418) A. I made up my mind when Mr. Underwood said he was satisfied he had had a fair trial, and I had heard the evidence.

Q. Now, thereafter did you discuss it with any of the other members of the Executive Board or anybody else?

A. Well, I might have done that. I presume we might have done that. I wouldn't say that I didn't. Naturally, you talked about the case and so forth, if that is what you mean.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. Don't you recall having talked about it to any of the other members of the Board?

A. Sir? All the other members, the same as I was. They had no alternate. There was only one decision they could make. There was no choice.

Q. Didn't you meet in executive session to discuss it?

A. Well, yes.

Q. When was that?

A. We had, I think two executive sessions afterward.

Q. I see. When did you hold those two sessions?

A. I think it was the nineteenth—dates are hard for me to remember. I think it was the nineteenth. I would refer you to the records, if you please, because I think it was the nineteenth. One or two days afterwards.

Q. That was the first meeting you had?

A. Sir?

(2419) Q. After the hearing. The nineteenth?

A. No, the seventeenth was the hearing, and then I think there were several cases came up there, and then the Board went into executive session, and then when it took this case up and voted on it and decided ——

Q. Was it unanimous?

A. Sir?

Q. Was the decision unanimous?

A. Oh, yes, yes.

Q. Was there any discussion on it?

A. Oh, well, there might have been some discussion, but there isn't any question about the decision in the Board. I never heard anybody discuss ——

Q. Well, they discussed it first, didn't they?

A. Discussed it ——

Q. They discussed the case first before they voted, didn't they?

A. Oh, yes, they might have discussed it, but everybody was at the trial, they heard everything that was going on. They all had pretty well made up their mind, I think.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. Who was at the Executive session?

A. Let's see. The whole Board was there, I don't think the President was in it. He never took a vote on it. He (2420) never voted on it. I know that—whether he was in there or not, I am not sure. I wouldn't say that, but he didn't vote. The President never votes.

Q. How long did it take from the time you convened until the time you found him guilty?

A. Well, that case—there were other matters came up while we were in executive session. I don't recall. I suppose—I don't think that case required very long, because a case that has been heard like that, and everybody satisfied that they had heard all sides, it doesn't take long for them to vote on it.

Q. How long did it take them to consider and decide it?

A. Well, I can't tell exactly. I don't think it take over half an hour, that case, to decide it.

Q. What did they talk about in that half hour?

A. Well, they talked about the case, I guess, and discussed matters like that. The problems that are involved, and so forth.

Q. What kind of problems?

A. There are a lot of problems when you find anybody guilty of anything.

Q. Were you talking about whether you should find him guilty or what the punishment should be?

A. Sir?

(2421) Q. During that half hour were you talking about whether or not to find him guilty, or what the punishment should be?

A. Oh, yes, that was the question before this committee and at the Board that time.

Q. How long did it take you to consider whether he was guilty?

A. I just told you, around probably, it was ten or fifteen minutes, up to half an hour. That is about all. That is as far as I can remember. I don't keep track of the time.

Q. When did you discuss the penalty, then?

A. That was discussed there.

Q. At the same time?

A. Yes, sure.

Q. During the same ten minutes?

A. I didn't say ten minutes.

Q. To a half hour.

A. Maybe a half hour. I really don't know exactly. It might have been two hours, for all I know. Time passes so fast when you sit in a Board like that.

Q. How many other matters did you have before the Board at that time?

A. Well, I don't know. I think I will refer you to the records. They will tell you.

(2422) Q. Don't you remember?

A. No, I don't remember all those matters. I will refer you to ——

Q. Did you sit in the morning or afternoon?

A. I am not sure. No, I can't tell you. I haven't consulted the record on this at all. I don't remember whether it was—if it was New York, I have an idea it was in the forenoon.

Q. Did anybody express an opinion that Mr. Underwood might not be guilty?

A. Nobody questioned that in there.

Q. At no time?

A. Not at that meeting. You are referring to this meeting?

Q. At any other meeting.

A. Before the trial there might have been somebody, before there was any evidence presented.

Q. Who fixed the penalty?

A. Well, the Board itself fixed the penalty, because they discussed it.

Q. Who suggested it?

A. Well, I don't remember now where it was brought out

from. I think it was discussed. The only thing I know, I didn't suggest it.

Q. Well, who did suggest it?

(2423) A. I told you, right now I didn't remember.

Q. Well, you voted for the penalty, didn't you?

A. Yes, but that had no bearing on who suggested it. I am not sure who made the motion right now. Maybe the record would indicate. They generally do. I am not sure they did, but maybe they did. I only know that I didn't make it.

Q. Who sat in at the occasion of the executive session? Who sat in?

A. Who sat in?

Q. Who all sat in, yes.

A. The Executive Board, when they go into executive session, it is only the Vice-Presidents, as I know. That is the executive session. I don't recall of anybody else being in there.

Q. You say you considered other matters at the same time.

A. Well, there might have been other matters pertaining to the—that come up previously. We hear a case one day and we discuss it in Executive Board sometimes.

Q. The General President sits in on those things, doesn't he?

A. It isn't necessary. He can refer it to anybody. The President can assign anybody. That happens ——

Q. Was he or wasn't he there?

(2424) A. I don't know for sure. He might have been in there, but I am not sure. I know that he didn't take part, or he didn't vote, or he didn't say anything in the Executive Board meeting. I know that. If he was in there, I can't tell you. Somebody else can that was there, they probably have a better recollection. He sat in on the trial, but,—part of the time, but whether he was in the executive session, I am not quite positive now.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. Was there any dissenting view by anyone, either as to the conviction or as to the penalty?

A. Not that I can recollect, no. Not that I remember, no.

Q. Wasn't the statement made that Underwood has got to be taught a lesson?

A. Not in there.

Q. Where was it made?

A. Well, I don't know whether it was made or not.

Q. Did you ever hear it at all?

A. It was never made—I never heard it made. I know I didn't make it.

Q. Who presented the opinion and the findings against Underwood?

A. I don't know who did it. I didn't.

Q. Well, you approved them, didn't you?

A. Certainly.

(2425) Q. When did you approve them?

A. Huh?

Q. When did you approve them?

A. Approve—wait a minute. What are you referring to? The findings?

Q. The findings.

A. The findings of the ——

Q. And the opinion.

A. Of the decision of the Executive Board?

Q. That's right.

A. In regards to Mr. Underwood's case?

Q. That's right.

A. Well, I presume the Secretary kept record of it, and we have a Secretary there, Mr. Gramling. I suppose he wrote the decision, after it had been made. I know I didn't.

Q. Do you know that Mr. Gramling did it?

A. Well, I think the Secretary's duties is to write the minutes of the meeting, of the decisions. I think his name is on it there.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. Well, now, are you saying that the findings ——

A. Huh?

Q. Are you saying that the findings and the opinion were presented in the form of a motion?

(2426) A. I think there was a motion to—you may call it motion—there was a vote taken as to whether he was guilty or not guilty. That did not require a motion. And then the penalty afterwards discussed.

Q. Did you discuss the findings?

A. Sir?

Q. Did you discuss the findings?

A. The penalties?

Q. The findings of the Board. Don't you know what the findings are?

A. After we had taken the vote, there wasn't any more to discuss on that. That was final. The Board had voted on it. Then it was up to the Secretary to record it. If I understand your question right.

Q. Then you didn't vote on specific findings, did you?

A. That is too deep for me. Findings. The finding—the Board had set in session and heard the case. They laid the matter over for an executive session. And in the executive session the case comes up again and they discuss it and they take a vote, and the vote was unanimous for guilt. The Secretary's duty is to record that finding, and then the question came up as to the penalty. That could be in the form of a motion.

Q. Was there any opinion rendered by the Board?

(2427) A. Well, I don't understand—yes, there was an opinion that they found him guilty. Is that the opinion that you want? I am lost now. Maybe. Sure, there was an opinion. The Board found him guilty. That was an opinion. The Secretary so recorded it.

* * * * * * * * *

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. Mr. Swanson, you are a General Vice-President now, are you not?

A. That is correct.

Q. You were elected to that position?

A. Yes.

Q. When was the last time you were elected to it?

A. The last time I was elected, the last convention two years ago in Seattle.

Q. Do you remember the date?

A. No. The convention is in April, isn't it? Sometime in April in Seattle. I don't recall the dates. The records would show. I could find out. I pay so little attention to dates.

(2428) Q. Now, you were nominated at that convention?

A. I was.

Q. Did you have any opposition for your office?

A. No, there was no opposition during the—nobody nominated against me.

Q. Was there any opposition to any of the other members of the Board?

A. No, there wasn't, no.

Q. Was there any opposition to the General President?

A. No.

Q. They were nominated at that convention, is that right?

A. They were all nominated, yes.

Q. Those same men had been in office prior to the convention?

A. Yes, they were—had been in office. They were in office.

Q. Now, were you all subsequently elected?

A. Yes, we were elected.

Q. When were you elected?

A. We were nominated, and then the ballots were sent out.

Q. Who sent the ballots out?

A. Well, they were sent out from headquarters.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. Did you send out ballots in your district here?

A. No, we just advertised the election to be held.

(2429) Q. You mean you did not distribute ballots to your membership?

A. We don't have to. Advertise, and tell them to come in and vote.

Q. I asked you whether or not ballots were sent out to your membership?

A. Sir?

Q. Were ballots sent out to your membership?

A. No. They voted. We sent out information notified them the election day. They came in.

Q. But you did not send ballots out. I just want a direct answer to that question.

A. No, we didn't send any ballots out.

Q. Now, when was the election held?

A. Well, now, you are going to have to come back to dates. I have to look the record up to see the dates. You must have it there.

Q. Was it at a regular meeting?

A. When they were sent out. We didn't send them out

Q. I said when was the election held?

A. The election was held at a regular meeting, an advertised meeting. Regular advertised meeting.

Q. And how was the election conducted?

A. Like any other election.

(2430) Q. Will you tell me how it was conducted in this case?

A. Well, ballots were passed out, and they had an opportunity to vote yes or no. Isn't that the way you conduct the elections?

Q. At the meeting?

A. At the meeting, yes.

Q. Was it by voice vote or written ballot?

A. No, by written ballot. They had the opportunity to mark the ballots.

Deposition of Victor S. Swanson as on Cross-examination, Offered by Plaintiff

Q. What did you do with those ballots?

A. I don't know whether they will have them here yet or not. They might be in the storeroom. I am not sure. No, I think they destroyed—I am not sure.

* * * * * * * * *

Q. Was there any opposition at the meeting to any of the nominees?

(2431) A. No, no opposition.

Q. Was it unanimous?

A. Unanimous. The vote was unanimous.

* * * * * * * * *

(2432) Q. How did you notify the General Office?

A. I don't do that. The Secretary does that.

Q. By mail?

A. That is up to him. I don't know. My answer is I don't know. I don't remember.

Q. Were any other steps taken to put the officers in office—the nominees in office?

A. I don't remember now what happened.

Q. Did the Executive Board approve the selection of Hunter Wharton as the supervisor for Local 542?

A. Not that I know of. Not so far as I know.

Q. Was it ever submitted to the Board?

A. I don't know. Not that I know of. It might have been, but I can't remember whether it was or not.

* * * * * * * * *

(2894) DEFENDANTS' EVIDENCE.

NORMAN BLUMBERG, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

BY MR. O'BRIEN:

Q. Mr. Blumberg, where do you live?
(2895) A. 7812 Washington Lane.
Q. Are you here pursuant to a subpoena served upon you?
A. I am.
Q. What is your present occupation, Mr. Blumberg?
A. My present occupation is the business manager of the Central Labor Union.
Q. And in connection with that position do you have any duties with the Building Trades Council?
A. Presently I am a liaison officer of the Building Trades Council.

BY THE COURT:

Q. When you say that you are business manager of the Central Labor Union, Mr. Blumberg, I take it that you are speaking of Philadelphia?
A. That's correct.

THE COURT: That wasn't mentioned, so I thought we better straighten that out right now.

BY MR. O'BRIEN:

Q. Would you explain, Mr. Blumberg, just what the Building Trades Council is. What is its make-up?

A. The Building Trades Council is a council consisting of all of the affiliates affiliated with the 19 international organizations of the Building and Construction Trades Department.

(2896) Q. And what is the Building and Construction Trades Department?

A. The Building and Construction Trades Department is the department of the construction industry under jurisdiction of the American Federation of Labor, composing all of the international unions in the building trades industry.

Q. Now, could you describe those craft unions that are in the Building Trades Council.

A. The crafts that are affiliated in the Building Trades Council?

Q. Yes, sir.

A. They are comprised of all of the trades enumerating from A to Z, which starts off with the Asbestos Workers, and it comprises, without me enumerating all of them, all of the construction trades that would make up the construction industry.

Q. What is the internal make-up of the Building Trades Council? First of all, is there a constitution?

A. There is a constitution.

Q. Did you bring a copy of the constitution with you?

A. Yes, I did.

Q. May I have it, please.

A. Yes (handing).

MR. O'BRIEN: Would you mark that, please.

(2897) (Constitution of the Building Trades Council was marked Exhibit D-37 for identification.)

BY MR. O'BRIEN:

Q. I show you Defendants' Exhibit 37, Mr. Blumberg, and ask you if you will identify it.

A. Identify this as the constitution of the Local Building Trades Council?

Q. If that is what it is.

A. That's what it is.

BY THE COURT:

Q. Of Philadelphia?

A. Of Philadelphia.

BY MR. O'BRIEN:

Q. What is the obligation of craft unions each to each other who belong to the Building and Construction Trades Council?

A. The obligation of the various trades affiliated with the council is to cooperate and support one another insofar as agreements, securing better working conditions, wages, etc.

Q. Now, does the Building Trades Council enter into contracts with contractors?

A. Yes.

Q. And what contractors does it enter into contracts with?

(2898) A. The Building Trades Council enters into a master agreement with the general contractors, better known as the Associated General Contractors, under a master agreement.

Q. Do you have a copy of any of those contracts with you?

A. No, I do not have.

Q. Can you tell us what those contracts provide?

A. In what respect?

Q. Well, let us take up the provisions as to strikes.

A. The provisions insofar as strikes are concerned, they are not to be condoned or approved unless approved by the council as a whole, and only when the agreement has

terminated, but not during the course of the agreement, which is taken up under the question of negotiations, arbitrations, etc.

(2899) Q. What is the governing body of the Building Trades Council? Is there an executive board or a board of directors?

A. There is an executive board.

Q. How many members compose that executive board?

A. The executive board is composed of a board of eight.

Q. Is that the governing body of the Building Trades Council?

A. When you say governing body, what do you mean?

Q. Well, is the executive board the body that makes the decisions, that runs the Building Trades Council?

A. No, it is the general body made up of all of the delegates that run the organization of the council.

Q. What are the duties then of the executive board?

A. The executive board is to handle all matters having been referred to them by the general body and report its findings and recommendations to the general body.

Q. Now, in 1951, Mr. Blumberg, what was your position with the Building and Construction Trades Council?

A. I was the secretary-treasurer of the Building and Construction Trades Council.

Q. In 1951 was Local Union No. 542 a member of the Building Trades Council?

A. Repeat that question.

(2900) Q. In 1951, the year 1951, was Local Union 542 a member of the Building Trades Council?

A. They were. They were members up to the May—May 28th, I believe. I would have to refer to the minutes for the exact date.

Q. They were a member?

A. (Witness nodding.)

Q. Did they continue to be a member during 1951?

A. No. They were out during that period from May 23 up until the fourth quarter of 1951.

Q. Well, is that the fourth quarter of 1951 or the fourth quarter of 1952? If you have any records there to refresh your recollection, you may use them.

A. That's right—well, that was the fourth quarter of 1952.

Q. When did they become disaffiliated with the Building Trades Council?

MR. FREEDMAN: May I have the question to which that was an answer, please?

(Record read as follows:

"Q. Well, is that the fourth quarter of 1951 or the fourth quarter of 1952? If you have any records there to refresh your recollection, you may use them.

(2901) "A. That's right—well, that was the fourth quarter of 1952.")

MR. FREEDMAN: Is that the date of disaffiliation, so I get it clear? Was that the question? He said 1952 ——,

THE COURT: He said that they were a member up to 1951, sometime in 1951, and then something happened in 1951.

(To the witness.) What is the story on that, Mr. Blumberg? How long were they out?

THE WITNESS: They were out from May of 1951 until the fourth quarter of 1952 when they reaffiliated.

MR. FREEDMAN: Thank you, Your Honor.

BY THE COURT:

Q. Which would be October, November and December of 1952?

A. That's right, the fourth quarter.

Q. So that they were out for maybe a year and a quarter or a year and a half?

A. Right.

* * * * * * * * *

(2903) Q. In May of 1951 Local 542 was no longer affiliated with the Building Trades Council. Will you tell us all of the things leading up to that disaffiliation?

A. Leading up to the disaffiliation, 542 placed pickets on various jobs which were not—which was not in compliance with the laws and rules and regulations of the Council's constitution.

Q. At that time 542 was a member of the Building Trades Council?

A. That's right.

Q. What provision of the Building Trades Council's con-
(2904) stitution did Local 542 violate?

A. Will you repeat that again?

Q. What provisions of the Building Trades Council's constitution did Local Union 542 violate?

A. Article X, Section 1.

Q. Could you read that provision, please?

A. Article X, Section 1:

"Demands for increased wages or reduction of hours must be submitted to the local Council for indorsement after approval of the national or international union interested has been obtained, and under no consideration shall a local union or unions of any organization affiliated with this Department be allowed to inaugurate strikes, or place pickets, without the local Council's consent."

Q. Now, as a result of that action by Local Union 542, were they notified to appear before the Building Trades Council's Executive Board?

A. They was.

Q. Who in Local Union 542 was asked to appear?

A. The business manager, Roy Underwood, appeared before the Executive Board.

Q. Did he appear?

A. At a later date. At that particular meeting, no, he (2905) did not.

Q. As a result of his failure to appear, did you, acting as secretary-treasurer of the Building Trades Council, address a letter to the officers of Local 542?

A. I did.

Q. Did you bring those letters or copies of those letters with you?

A. Yes. (Handing documents to counsel.)

MR. O'BRIEN: Will you mark these in this order, please?

(Copy of a letter dated May 14, 1951, to Mr. Roy Underwood from Mr. Norman Blumberg was marked for identification as Exhibit D-38.)

(Registered return receipt attached to Exhibit D-38 was marked for identification as D-38-A.)

(Copy of a letter dated May 14, 1951, to Mr. Charles Denoncour, from Mr. Norman Blumberg was marked for identification as Exhibit D-39.)

(Receipts for registered articles and registered return receipts attached to Exhibit D-39 were marked for identification as D-39-A, D-39-B and D-39-C.)

(Copy of a letter dated May 14, 1951, to Mr. Gerald Leone, from Mr. Norman Blumberg was marked for identification as Exhibit D-40.)

(2906) (Registered return receipt attached to Exhibit D-40 was marked for identification as Exhibit D-40-A.)

(Copy of a letter dated May 14, 1951, to Mr. Daniel O'Connell, from Mr. Norman Blumberg was marked for identification as Exhibit D-41.)

(Registered return receipt attached to Exhibit D-41 was marked for identification as Exhibit D-41-A.)

(Two-page letter dated May 21, 1951, to Operating Engineers Union Locals No. 542, 542A, 542B and 542C from Mr. Norman Blumberg was marked for identification as D-42 and D-42-A.)

(Registered return receipt attached to Exhibit D-42 was marked for identification as D-42-B.)

(Receipt for registered article attached to Exhibit D-42 was marked for identification as Exhibit D-42-C.)

(Copy of a letter dated May 29, 1951, to Mr. Roy J. Underwood from Mr. Norman Blumberg was marked for identification as Exhibit D-43.)

(Registered return receipt attached to Exhibit D-43 was marked for identification as Exhibit D-43-A.)

(2907) THE COURT: What are those?

MR. O'BRIEN: They are letters. Defendants' Exhibits Nos. 38 through 43 are letters from the Building Trades Council which Mr. Blumberg as secretary-treasurer wrote to Mr. Underwood, and there are some to Mr. Denoncour. I will have the witness identify each individual letter.

THE COURT: All right. They are Nos. 38 through 43?

MR. O'BRIEN: Yes, sir, all from the Building Trades Council to members or officers of 542.

THE COURT: All right.

BY MR. O'BRIEN:

Q. I show you Defendants' Exhibit 38, Mr. Blumberg, and I will ask you if you will identify that exhibit.

THE COURT: Identify it by date to start out with, Mr. Blumberg.

BY MR. O'BRIEN:

Q. Identify it by date and then the person to whom it is written and from whom.

Will you identify that, please?

A. I identify it under date of May 14, 1951, addressed to Roy Underwood, president of Operating Engineers, Local 542.

It says in accordance with the action of the (2908) Council—do you want me to read it?

Q. Yes, you may read it.

A. "In accordance with the action of our Council and in accordance with the laws of our Council and the Building and Construction Trades Department, you are hereby being served with a copy of the Charges preferred against you and are requested to appear before our General Body Meeting on Friday, May 18th at 11:00 A. M. when this case will be heard.

"We will appreciate your attendance so as this entire matter may be cleared up in the interest of all parties involved.

"Looking forward to seeing you on Friday as noted above, I am Fraternally yours, Norman Blumberg, Secretary-Treasurer."

Q. Did Mr. Underwood show up at the meeting of May 18 as he was asked to do in this letter?

A. No, he did not.

Q. I show you Defendants' Exhibit 39 and ask you to identify that exhibit, please, in the same manner as you identified No. 38.

A. That is under date of May 14, 1951, addressed to Charles Denoncour, Business Representative, Operating Engineers Local 542, and it reads the same as the one sent to Underwood.

(2909) Q. Was Mr. Denoncour asked to attend the meeting of May 18?

A. No, Denoncour didn't attend.

Q. He was asked to, however?

A. He was asked.

Q. I show you Defendants' Exhibit No. 40 and ask you to identify that exhibit.

A. Under date of May 14, addressed to Gerald Leone, Business Representative, Operating Engineers Local 542, and it also reads the same.

Q. Did Mr. Leone attend the meeting of May 18 as requested?

A. No, he did not attend.

Q. I show you Defendants' Exhibit 41 and ask you if you will identify that exhibit.

A. Under date of May 14, 1951, addressed to Daniel O'Connell, Business Representative, Operating Engineers Local 542, and it reads the same.

Q. Did Mr. O'Connell attend the meeting of May 18?

A. Mr. O'Connell did not attend the meeting.

Q. I show you Defendants' Exhibit 42 and ask you if you will identify that exhibit, please.

A. It is dated May 21, 1951, addressed to the Operating Engineers Union, Locals 542, 542A, 542B and 542C, and it is addressed to the attention of Otto Weidman, the secretary.

(2910) Q. And who signed the letter?

A. The letter was signed by myself, Norman Blumberg.

as Secretary-Treasurer of the Building and Construction Trades Council.

Q. Would you read that letter, please.

A. "In accordance with the action taken by our Council at its meeting held on Friday, May 18th, the Delegates of our Council present sat as Jurors to try the Defendants as follows: Messrs. Roy Underwood, Charles Denoncour, Gerald Leone and Daniel O'Connell, and in accordance with the Charges, as submitted to said delegates of your organization, they were found guilty.

"The Secretary of this Council was then ordered, in accordance with Article VIII of our Constitution and By-Laws, as noted below, to notify you that the Delegates of your organization stand suspended and that their cases be, at once, referred to your Local Union for trial. Said Union shall be furnished with a copy of the Charges.

"ARTICLE VIII—Charges and Trials.

"Section 1. Trial of any delegate represented in the Council who does or performs any act injurious (2911) to the Council or to the labor interests generally may be prosecuted in the manner provided as follows: Charges shall first be preferred by a Member of this Council in writing, stating the offense committed, and a copy thereof be forwarded to the accused. Such charges shall be referred to the Executive Board, who shall investigate the charges made and report without unnecessary delay in the following words: 'There seems to be no foundation for the charge' or 'There seems to be foundation for the charge.' The Council shall convene in regular or special session; the delegates sitting as jurors to try the defendant. If found guilty by two-thirds vote, the delegate shall stand suspended and his case be at once referred to his Union for trial. Said Union shall be furnished with a copy of the charges and the names and addresses of the witnesses examined.

"It is also to be noted that the delegates as charged failed to appear to defend their actions. This, in accordance with

our laws, does not retard the processing of the cases and are tried under the term 'in absentia.'

(2912) "We shall appreciate your cooperation in seeing that the laws of the Building and Construction Trades Department are carried out in having these cases referred to your Local Union for trial, and, we shall await the outcome of your action.

"Fraternally yours,

"NORMAN BLUMBERG

"Secretary-Treasurer."

Q. I show you Defendant's Exhibit 43 and ask you to identify that exhibit, please.

A. Dated May 29, 1951, addressed to Roy J. Underwood, President & Business Manager, Operating Engineers Union Local No. 542.

"Dear Sir and Brother:

"In accordance with the instructions of our Council at its meeting held Friday, May 25th, I was instructed to inform you as to the action of our Council regarding the request contained in your wire dated May 5th, 1951 in which you request that we accept the resignation of your affiliation with our Council covering Local Unions 542, 542A and 542B. Please be advised that our Council has voted to comply with your request.

(2913) "Fraternally yours,

"NORMAN BLUMBERG

"Secretary-Treasurer."

Q. Now, in 1952, do you remember the agent of Local 542 coming to see you regarding the 1952 strike?

A. Yes.

Q. Who?

A. Business Representative Peter Pantaleo.

Q. What did he say to you and what did you say to him?

A. He came upon ——

Q. First of all, can you recall the date of that meeting?

A. Well, I have the minutes here, and I have made a notation from the minutes, so I can give you the date, which is June 13, 1952.

Q. All right. Now will you relate what your conversation with Mr. Pantaleo was.

A. The Business Representative, Peter Pantaleo, appeared before the Council upon instructions of Business Manager Underwood and asked for the support of the Building Trades in having our people recognize their picket lines where non-union engineers were being employed.

(2914) Q. And what action did the Building Trades Council take on that request?

A. The Council did take an affirmative action of approval on the basis that they would reaffiliate.

Q. And did the Council ask Mr. Pantaleo to have Local Union 542 reaffiliate with the Building Trades Council?

A. Well, that was the information given to him, and he was to take that back to Underwood.

Q. And what form was that request for reaffiliation to take? Was it to be a letter, a telegram, or a phone call?

A. That was to be done by letter.

Q. And did the Building Trades Council ever receive a letter requesting reaffiliation?

A. No, the Building Trades did not receive the letter.

Q. As a result of not receiving the letter, did the Building Trades Council take any action against Local Union 542?

A. Upon no receipt of letter, the Council rescinded its action for support.

Q. And what date was that action taken by the Council?

A. That was under date of June 20.

Q. And at that time, on June 20, the Council voted not to support the 542 strike; is that your testimony?

(2915) A. That's correct.

Q. Now, did the Executive Board or the Council have further meetings regarding the strike being conducted in May, June, and July of 1952 by Local Union 542? Was this a subject of any of your meetings in the Building Trades Council?

A. That was a continuous subject.

Q. In your own words, Mr. Blumberg, would you relate

what action was taken by the Building Trades Council because of this strike being conducted by 542?

A. The action the Council had taken after receiving numerous complaints from our members as to being driven out of employment, as well as ——

MR. FREEDMAN: If the Court please, I object to any hearsay at this point. I haven't been objecting up to now, although I think there may have been some objectionable questions. I do object at this point, and I request that the witness be limited to his own personal knowledge.

THE COURT: The objection is overruled. Proceed.

THE WITNESS: Upon the complaints of our members being driven out of employment, as well as letters (2916) received from the general contractors with whom we have a master agreement, complaining that something should be done, if not all of the jobs would be shut down due to the engineers not working.

BY MR. O'BRIEN:

Q. Now, on those jobs which the engineers had struck, were any members of the Building Trades Council working?

A. All of our people were working up to such time—no engineers being employed, our people were then forced to unemployment because we could not work without the engineers.

Q. Why? Why couldn't you work without the engineers?

A. Because the hoisting of materials through the equipment that they use.

Q. Did there come a time when you were authorized by the Council to see President Gray of the National Building Trades Department?

A. That came as the instructions of the general body and the Executive Board that something should be done before we are all put out of work. It was then the Council's action in instructing its officers to proceed to Atlantic City and appear before some of the presidents that were in attendance at the Executive Council session (2917) seeking relief from them.

Q. And did you go to Atlantic City?

A. Yes.

Q. Who went with you?

A. What was that question?

Q. Did any other officers of the Building Trades Council go with you?

A. Yes, the President.

Q. What is his name?

A. John Cragin was the President, and Raymond Lavin, one of the Vice-Presidents, and myself.

Q. And you saw President Gray in Atlantic City?

A. Yes, I did talk to President Gray and practically all of the General Presidents who are usually in attendance at those sessions.

Q. What subject did you discuss with them?

A. Discussed with them the subject of relief from them because we were ——

Q. Why would you ask relief from the International Presidents?

A. So as we would not be cited for a violation of our Constitution in the event that our people stopped work on the job where the engineers were involved.

(2918) Q. Now, what instructions did you receive from President Gray?

A. The instructions that we received were for us to go ahead in accordance with our plans.

Q. Did you talk with General President William Maloney of the Engineers while you were in Atlantic City?

A. Yes, we did.

Q. And what did you say to Mr. Maloney?

A. What we asked Maloney to do as President of that International was to give Philadelphia some relief in stopping the strikes that were going on and in compliance with the Constitution.

Q. What did Mr. Maloney say to you?

A. Maloney, I believe my memory serves me right, said that he would check into the matter for the purpose of cooperating with the Building Trades Department.

Q. As a result of that meeting in Atlantic City did the Building Trades Council take any action or adopt any resolutions regarding the strike being conducted by 542?

A. Upon the recommendations of the officers and the Executive Board, the Council was prepared to put in motion the plan that we were going to inaugurate to help to bring relief.

(2919) Q. And what was that plan?

A. That was a question that we, our people, would refuse to work on any job where the engineers were employed.

Q. Now, what effect would the Building Trades Council refusal to work on a job where an engineer was employed have on the engineers?

MR. FREEDMAN: If the Court please, I object to that. It is purely speculative and certainly not relevant, certainly not admissible.

MR. O'BRIEN: I can rephrase that.

THE COURT: Your objection is overruled. Read the question back.

(The last question was read.)

THE WITNESS: Is that question O. K. to answer?

MR. O'BRIEN: Yes, sir.

A. The effect that that would have on the various jobs would either have the general contractors retain our people or have the engineers employed, and it was the only course that we could pursue in order that we would not be cited as a violation or wait until we were starved out or driven off the jobs.

BY MR. O'BRIEN:

(2920) Q. Now, did you, Mr. Blumberg, or the Building Trades Council, make a study of the effect of the engineers' strike of 1952?

A. Yes.

* * * * * * * *

(2921) BY THE COURT:

Q. Was a wage study made in connection with the loss of man hours, Mr. Blumberg?

A. Yes.

BY MR. O'BRIEN:

Q. Was that study undertaken under your supervision and control?

A. That's right.

Q. Do you have a memorandum of the amount of man hours that were lost, of wages that were lost, and of the total value of the construction that was affected?

A. I don't have that memorandum here.

(2922) BY THE COURT:

Q. Did you make such a study?

A. Yes.

Q. And did you come up with an answer from your sources of information?

A. That's right.

Q. And what were your sources of information, Mr. Blumberg?

A. Your Honor, the sources of our information were gathered through the approximate cost of the various jobs, through the Dodge reports and the contractors, through the sub-contractors, the number of people employed, and through the different unions employed, and so far as the loss of time, etc.

THE COURT: All right, go ahead, Mr. O'Brien.

* * * * * * * * *

(2925) BY MR. O'BRIEN:

Q. Having refreshed your recollection, Mr. Blumberg, (2926) can you tell us in dollars, dollars worth, the construction projects which were affected in the five-county area by Local Union 542's strike in 1952?

MR. FREEDMAN: Objection, sir.

THE COURT: Overruled.

A. The volume of work is 125 million dollars worth of work.

Q. Could you tell us or identify for us some of the projects that were tied up because of this strike?

A. In the five-county area the projects involved were the airports, the expressway, the turnpike extensions, factories, streets, sewers, highways, subway, subway extensions, the U. S. housing projects, home building projects, playgrounds and other city projects such as schools, churches, refineries,

hospitals, bridges, U. S. Navy projects, office buildings, apartment projects, commercial buildings, including some part of the U. S. Steel plant at Morrisville, Pennsylvania.

* * * * * * * * *

(2927) BY THE COURT:

Q. Did you know these facts of your own knowledge at that time, Mr. Blumberg?

A. Through the survey and knowledge of these projects going on, yes.

Q. You knew it as your own knowledge at that time?

(2928) A. That's right.

Q. May I inquire isn't your particular job as Secretary-Treasurer pretty much of an executive job? Don't you pretty well call meetings, and so forth? Aren't you the one responsible for calling meetings of the Council, and so forth?

A. Calling meetings of the Executive Board. The Council is a regular meeting, yes.

Q. Yes. So what went on generally in your industry, you were pretty much familiar with it then and are now; is that right?

A. Yes, sir.

THE COURT: All right, go ahead.

BY MR. O'BRIEN:

Q. Now, what do the studies reveal, Mr. Blumberg, as to the number of construction workers affiliated with your Council being unemployed by reason of this strike?

MR. FREEDMAN: Objection, sir.

THE COURT: Overruled.

THE WITNESS: May I have that question repeated?

THE COURT: Read the question.

(Last question read.)

A. The survey showed approximately 8,500 of our people (2929) were involved in that being unemployed.

BY MR. O'BRIEN:

Q. What trades or crafts were involved, were on the street, as a result of this strike?

A. That would involve all of the trades affiliated with the Council.

Q. Could you enumerate them?

A. Well ——

BY THE COURT:

Q. I think it is important enough. Do you have any of your information there that would give us the crafts, all of them, that are involved in this situation?

A. Well, Your Honor, I will try to enumerate them.

Q. I think it is important. I would like to have you do it, if you can.

MR. O'BRIEN: What was that exhibit number that you had marked?

MR. FREEDMAN: 195.

MR. O'BRIEN: P-195. Could I see that?

THE WITNESS: Yes.

The trades that are affiliated with the Building Trades

Council that would be involved and affected by this strike would be the asbestos workers, the bricklayers, the carpenters, the cement finishers, (2930) the plasterers, the painters, glazers, the laborers, plasterers tenders, the ironworkers, the riggers, the cement masons, the terrazzo workers, the roofers—composition, slate and tile, the teamsters, the lathers.

Now, I might have missed some.

THE COURT: Now about plumbing and steamfitting?

THE WITNESS: The plumbers, the steamfitters. You are a better building tradesman than I am. The plumbers and steamfitters.

BY MR. O'BRIEN:

Q. The electricians?

A. If I have omitted any, I will give them to you later.

THE COURT: All right.

* * * * * * *

Q. Mr. Blumberg, as a result of these studies that you made, did you ascertain how many man hours were lost as a result of the engineers' 1952 strike?

A. Yes.

(2931) Q. What is the total of those man hours lost?

MR. FREEDMAN: Objection, sir.

THE COURT: Overruled.

A. Approximately three million man hours.

BY MR. O'BRIEN:

Q. Three million man hours were lost as a result of that strike?

A. That's right.

Q. What did that come to in wages lost to the craftsmen as a result of this strike?

MR. FREEDMAN: Same objection, sir.

THE COURT: Overruled.

A. Approximately nine million dollars.

* * * * * * * * * *

(3225) BY MR. O'BRIEN:

Q. Mr. Blumberg, you brought additional documents into court with you this morning?

A. Yes; I have.

Q. May I see them, please.

(3226) MR. O'BRIEN: Give that the next number.

(Letter from John McShain, Inc., to the Building & Construction Trades Council, dated June 17, 1952, was marked Exhibit D-66 for identification.)

BY MR. O'BRIEN:

Q. I show you what has been marked Defendants' Exhibit No. 66 and ask you if you will identify that, please.

A. Yes.

Q. What is it?

A. A letter from John McShain, Incorporated, Builders.

addressed to the Building Trades Council under date of June 17, 1952.

Q. Would you read it, please.

A. "You, no doubt, are aware that for the past week, the engineers have placed pickets at the entrance to the Airport Job, with the result that the other trades refuse to proceed with their work.

"I was given to understand that they were picketing all jobs, but in a statement made by the representative of the Building Trades Council on Sunday, I noted that the engineers indicated that they were picketing only the jobs that were using non-union engineers. At no time, have we used any non-union mechanics on the above job, nor have we (3227) attempted to use any appliances on this operation to substitute for the hoisting machine. For the past eight months, the tile man has been using a conveyor to lift his material to the second floor and the engineers saw no reason to object, as this machine does not require an engineer. We have, of course, continued the use of the conveyor and this is the only basis on which the engineers could possibly contend that material was being lifted to the second floor which normally would be transported by the hoist.

"Under the above conditions, it does not seem fair to us that we should be penalized, and, at the same time, the City should be deprived of the use of a desperately needed new Airport.

"I trust that you will investigate this matter, and we will have some favorable word from you in the very near future.

"Very truly yours,

"JOHN McSHAIN, INC.

"/s/ John McShain

"John McShain, President."

(Document headed "Newspaper Release Issued To the Press Tuesday, August 5, 1952" was marked Exhibit (3228) D-67 for identification.)

BY MR. O'BRIEN:

Q. I show you a paper which has been marked Defendants' Exhibit No. 67 and ask you if you will identify that, please.

A. Newspaper release issued to the press Tuesday, August 5, 1952.

Q. Would you read it, please.

A. "The Building and Construction Trades Council at its meeting held on Friday, August 1st, took the following action in the interest of all parties affected and involved dealing with the Operating Engineers Union Local #542's inability to settle its long drawn out strike. It deems it necessary to take the following action as noted in the wire sent to Mr. Roy J. Underwood, Business Manager, Operating Engineers Union Local #542 and Mr. William E. Maloney, International President, International Union of Operating Engineers, that unless the request as noted in the wire is immediately carried out the Council will with the assistance of all its affiliated local unions carry out the order which will affect all jobs on which members of the affiliated local unions are employed.

(3229) "'Due to protracted strike by the Engineers which has caused 6500 members of the trades affiliated with the Building Trades Council, unemployment, and at last meeting has instructed the Executive Committee to notify Mr. Underwood and also President Maloney that unless something is done at once to bring about immediate settlement our members will not work on any project where Engineers are employed. We must insist on immediate action on this request otherwise Executive Committee of our Council will carry out orders of our Council.'

"Norman Blumberg

"Secretary-Treasurer

"Building and Construction Trades Council of Philadelphia & Vicinity."

* * * * * * * * *

(3258) RE-DIRECT EXAMINATION.

BY MR. O'BRIEN:

Q. I show you Plaintiffs' Exhibit No. 200, Mr. Blumberg, which consists of four separate letters addressed to the Building and Construction Trades Council, and I will ask you if you will read those letters, please.

A. This letter is from the Philadelphia Chapter of The Associated General Contractors under date of June 24, 1952, addressed to the Building and Construction Trades Council, 715 North Broad Street, Philadelphia.

"Gentlemen:

"As you well know many of the members of your various affiliated local unions are being (3259) deprived of work on construction jobs of some of the members of this association by reason of picket lines established by Local Unions 542, 542-A and 542-B of the International Union of Operating Engineers. These picket lines have been established on some of the jobs through no fault of this association or its members and in many cases have been established on jobs on which no equipment is being used that has ever been operated by members of the Operating Engineers Union.

"We have been informed that the police will allow any tradesmen who desire to work to pass through these picket lines. Therefore it is requested that your Council take immediate action and inform the members of your affiliated locals that you do not sanction or recognize the picket lines being established by the Engineers and therefore restore to the various tradesmen the right to earn their livelihood.

"Very truly yours,

"Harry P. Taylor,

"Executive Secretary."

This is from the Philadelphia Chapter, The Associated General Contractors, on the date of June 27, 1952, Building and Construction Trades Council, 715 North (3260) Broad Street, Philadelphia, Pennsylvania.

"Gentlemen:

"During the past five or six weeks, our contractors have been unable to operate normally and economically because of the constant interferences and threats of further interference resulting from the dispute with the Operating Engineers Local Union 542, etc. Our membership has done everything possible to continue the employment of the other crafts, even though at a loss to them in their operations.

"A recent canvass of our membership discloses, especially in the light of the threatened violence and other interferences that took place this week, that unless the Building Construction Trades Council takes affirmative action today to alleviate the present conditions and handicaps under which our contractors are obliged to conduct their businesses, they will be forced to shut down all jobs were economic and normal operations are impossible. From all indications, many of our contractors will be obliged to commence shutting down their jobs on Monday if the present conditions prevail at that time.

(3261) "Would you kindly acknowledge receipt of this letter and advise by telegram or messenger the action taken by your Council at its meeting today.

"Very truly yours,

"Harry P. Taylor,

"Executive Secretary."

This is from The Contractors Association of Philadelphia under date of July 11, 1952, addressed to the Building and Construction Trades Council, 715 North Broad Street, Philadelphia.

"Gentlemen:

"During the past nine weeks many of our contractors have been unable to perform many phases of their construction activities due to the constant interference and threats of violence resulting from a dispute with the Operating Engineers Local 542. As you know, the heavy and highway construction industry is largely depending upon

the operating engineers for certain phases of construction operations.

"Everything possible has been done to carry on such phases of the work being done by other trades affiliated with your Council. However, the time has come when it is impossible for those contractors now (3262) attempting to employ other crafts to proceed economically with construction activities and it is apparent that within the next week all of the construction acivities in the heavy and highway construction field will be stopped.

"We deem it necessary that you should be advised of the condition which is being created by the actions of Local 542. Our contractors have made every effort to proceed with the work but in view of the conditions which have been created, the contractors feel that the only possible course to prevent further financial loss is to stop all construction activities.

"We would appreciate an acknowledgment of this letter.

"Yours very truly,

"The Contractors Association of Philadelphia

"H. A. Windisch—Secretary."

This is from the Pennsylvania Excavating Contractors Association under date of July 11, 1952, addressed to the Building Construction Trades Council, 715 North Broad Street, Philadelphia.

"Gentlemen:

"Many of the members of the Association have (3263) expressed of the utter impossibility of continuing their operations under the adverse conditions created by the operating engineers. Our members have been trying religiously to continue operations even though such operations are uneconomic in the hope that the strike of the operating engineers would be amicably adjusted.

"However, the members feel that they cannot continue their operations under the unsatisfactory and uneconomic conditions which have been created by the strike of the operating engineers. Many members have told me that

they intended to shut down their jobs until such times as it became practical to continue operations on a more favorable economic scale.

"If you have any suggestions in the matter I will be glad to discuss them with you but I am afraid that if you are not able to afford some immediate relief, many of the jobs in the area will be discontinued.

"Very truly yours,

"A. Bernard Hirsch, Secretary."

Q. I show you Defendants' Exhibit No. 37, Mr. Blumberg, which is the constitution and by-laws of the Building Trades Council, Philadelphia Building Trades Council. When were those by-laws and constitution adopted by the local Council?

(3264) A. There is no date on here, but to the best of my recollection this constitution was adopted when I went in as secretary in 1935, I think was the date.

Q. And was that constitution and set of by-laws approved by the national department?

A. Yes.

Q. I show you Plaintiffs' Exhibit No. 203, which is a letter from you to Mr. Underwood dated April 25, 1952. Before sending that letter to Mr. Underwood, was the sending of it discussed either by the Executive Board or by the local Council?

A. Yes.

Q. What led up to the sending of that letter?

A. A wire received from Roy Underwood.

Q. And is that wire in evidence here? Is that wire, that telegram in evidence here?

A. Yes. That was read out Monday.

(3067) HUNTER P. WHARTON, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

BY MR. WOLFE:

Q. Mr. Wharton, what is your occupation?

(3068) A. I am a hoisting engineer, but my present work is assistant to the general president.

Q. Are you a member of the International Union of Operating Engineers?

A. I am, Local Union No. 66.

Q. When did you first become a member of the International Union of Operating Engineers?

A. In April of 1926.

Q. Local 66 is located where?

A. In Pittsburgh, Pennsylvania.

Q. I believe you said you are a member of that local today?

A. I am, yes, sir.

Q. Did you ever have any official position with Local 66?

A. Yes, sir, I was business agent from 1930 to 1935 and then business manager from 1935 to 1950.

Q. Do you today still have any official position with Local 66?

A. Nothing, only my membership in that particular local.

Q. What position if any do you have with the International Union of Operating Engineers?

A. I am assistant to the general president and a member of the Board of Trustees.

Q. When did you become assistant to the general president?

A. In April of 1950.

(3069) Q. And when did you become a member of the Board of Trustees of the International?

A. I believe it was 1954 or 1955. 1954, I believe it was. It may have been 1955.

Q. You still are a trustee of the International?

A. Yes, sir, recently elected to that position.

Q. Is the position of assistant to the general president an official position with the International?

A. No, sir, it is an appointment, not an elected position, if that is what you are referring to. It is by appointment.

Q. Appointment by whom?

A. The general president.

Q. Are you also a member of the Jurisdictional Board?

A. Yes, sir.

Q. What is the official title of that?

A. It is the National Board for the Settlement of Jurisdictional Disputes in the Construction Industry.

Q. Who are the affiliates or members of that Board? Is it the building and construction unions?

A. The Board is established by the blessings of the National Labor Relations Board, and it is composed of an equal number of contractor members and an equal number of labor members, and the labor members of the Board are appointed by the Building and Construction Trades Department.

(3070) Q. What are the functions of that Board?

A. All of the jurisdictional disputes in the construction industry that are not settled at the local level are either referred to the Board by either of the respective International unions involved or by the contractor involved or by the contractor's association in the particular area where the dispute may exist. Those disputes are referred there, and the Board composed of four members of the contractor's association and four members of the unions then review the material, briefs, that are submitted to the Board, and the basis for the decisions of the Board are on a basis of agreements or decisions of record which are approved by the Building Trades Department in all instances, and

some of the decisions are by the American Federation of Labor.

Q. Now, you are also supervisor of Local 542, are you not?

A. Supervisor of Local 542, yes, sir.

Q. And you were so designated by the order of General President Maloney, dated August 19, 1952, which has already been offered in evidence in this case?

A. Yes, sir.

Q. And you have continued as supervisor of Local 542 since the date of that order, August 19, 1952, up to the present time?

A. That's right, yes, sir.

(3071) Q. Are you familiar with the efforts made in 1949 Mr. Wharton, to organize the workers on the Pennsylvania Turnpike?

A. To some degree, yes, sir.

Q. Will you tell us what the situation was at the time that the organizational efforts began, with respect to the manner in which that work was conducted by the contractors on the Turnpike.

A. Are you referring to the whole of the Turnpike or just the eastern half of the Turnpike?

Q. Let us say the end in which Local 542 was engaged.

A. That would be the eastern half. Well, as I recall, it having been a long time, as I recall it, there was the extension of the Turnpike. A number of contractors secured that work, some of them being union contractors operating in some areas union. Other of the contractors receiving contracts were strictly non-union contractors and employed no union men. Those jobs were awarded. The contractors, as I recall, I think the first contracts were let to non-union contractors. The contractors who were in contractual relationships with our various unions throughout the country, some of them with an International agreement with the International Union, then secured contracts, and because of the general situation existing in the area in

which the (3072) Turnpike was being constructed, they followed the general policy of that area and elected to try to operate the jobs non-union.

There was one of the contractors, I believe, from a particular area which I came from, who was a union contractor under International agreement, also under an agreement with our local union in Pittsburgh, and possibly several other individual local unions they had agreements with came into the area and attempted to follow the policy in the area there by the non-union contractors.

Q. What contractor was that?

A. The one I am referring to is the Harrison Construction Company from Pittsburgh, and they came in and started to operate and apparently brought along a number of the members of Local Union 66 with them into the area to work on the project, which is the customary practice with many contractors. They will have members of a union, and if it is a national contractor who travels around, some of the men follow around the country with the contractor wherever he may have a job. That's customary in the construction industry.

We were advised that some of these men were over here. I talked to the contractor on several occasions. I sent one of our business agents in here to meet with the business agent of 542. I believe his name was Gardner—I (3073) may be wrong on the name—sent him in here to work with that business agent to give him a hand to straighten any of our fellows out, make them cooperate with the local union, and advised them that under the constitution it was necessary for them to report to the local union in whose territory they were working and did what we could to assist the local union here.

The contractors continued to try to work on the open-shop policy, and I believe Local 542 requested some help from us, and, as I say, we sent the business agent in to render that help and detect those who might be on the job.

In addition to that, we, from those who we knew were on the jobs, we immediately, as soon as we could determined that, sent each one of them a notice that they should cooperate with the local union in the particular area they were working and to report to the local union; otherwise they were jeopardizing their membership by not adhering to the terms of the constitution.

Q. I show you at this point a letter and ask you to identify it, and I ask that the letter which I am about to show to the witness be marked as Defendants' Exhibit 44.

(Letter dated September 27, 1949, from Hunter P. Wharton to Mr. Henry Smith, Brier Hill, was marked Exhibit (3074) D-44 for identification.)

MR. WOLFE: To which is attached a photostatic copy of the envelope, registered mail envelope, with which the letter was enclosed.

(Registered mail envelope accompanying letter D-44 was marked Exhibit D-44-A for identification.)

BY MR. WOLFE:

Q. Mr. Wharton, will you examine that letter and tell me whether that is the type of communication which you said was sent to the various members of Local 66 who were working in the eastern section of the Turnpike.

A. Yes, it is.

* * * * * * * *

Q. Would you read that letter, Mr. Wharton.

(3075) A. This is a photostat of the communication on the stationery of the International Union of Operating Engineers, Local Union 66, 66-A, B, and C, 208 House Build-

ing, Pittsburgh 22, Pennsylvania, dated September 27, 1949, and addressed to Henry Smith, Brier Hill, Pennsylvania.

"Dear Sir and Brother:

"Information has come to this office that you are now working in Eastern Pennsylvania on one of the sections of the new Turnpike. We wish to advise you that all of the Eastern Sections of the Turnpike come under the jurisdiction of Local Union No. 542, of Philadelphia, and Local Union No. 66 does not have any jurisdiction or rights in Eastern Pennsylvania.

"You must, in accordance with the Constitution, report into the Local Union under whose jurisdiction you are working and work under wage rates and working conditions established by the Local Union covering the area. Failure to do this will cause you to be subject to the loss of your union membership.

"We have been informed that certain officials of the Company for which you are employed have informed you that you have the consent of Local No. 66 to work in Eastern Pennsylvania. This information is untrue and you are advised to work under the instructions (3076) of the officials of Local Union No. 542, or Local Union No. 66 cannot and will not afford assistance in any way.

"We therefore advise you to cooperate with the official of Local Union No. 542.

"Fraternally yours,

"Engineers Local Union No. 66."

Signed by Hunter P. Wharton, Business Manager.

Q. Do you recall the names of any of the other people to whom the letter was sent or can you tell us in general to whom it was sent?

A. Well, I couldn't offhand tell you the names. It has been so long that I wouldn't attempt to remember the names of the individuals, but it is everyone who we were advised of our membership that was working in the area and we had an up-to-date address for them we sent them a registered letter the same as this one here.

Q. Were there other unions also that were attempting to organize this section of the Turnpike?

A. Yes, sir.

Q. As well as the engineers?

A. Yes, sir, the laborers and carpenters and the teamsters. Those are the four principal ones employed on that class of work.

(3077) Q. Mr. Wharton, you have been in court all throughout this trial, have you not?

A. Yes, sir.

Q. And you heard the testimony of some of the plaintiffs' witnesses to the effect that you did nothing to prevent members of the Local 66 from crossing Local 542's picket line; in fact, you encouraged it. What did you do to assist Local 542 in organizing their body?

A. Well, as I said before, we contacted the contractors, advised them. We contacted each of the members who we knew were over here and advised them. We sent each one of them a letter of this nature here. I met on the job site personally with, as I recall it, Mr. McDonald, Mr. Underwood, several of the business agents when the picket lines were on the job, and met with them out on the job site to be as—of any help that I possibly could to try to locate any of our members and personally advise them that they were in error if they were working on those jobs and to advise them that under no circumstances did they have the blessings of Local 66 to work on those jobs.

Q. Now, did General President Maloney take some action in connection with this also?

A. Yes, sir. I don't recall the date, but it can be determined by the period in which the American Federation
(3078) of Labor was meeting in St. Paul. I received word from Mr. Maloney to come to St. Paul, and I went to St. Paul. I believe the next day after I arrived there was a meeting called of the International unions, the laborers, the carpenters, and the engineers, at which the general presidents of those organizations, along with several other

International representatives and some of the local union representatives who were also there.

At that meeting the eastern Turnpike situation was discussed among the general presidents and others present, and after some preliminary discussions the general president of the carpenters appointed one of their International representatives who is now their first vice-president. The laborers likewise appointed one of their people.

Mr. Maloney turned to me and said, "Hunter, will you handle it for the engineers?"

Q. And that ——

MR. FREEDMAN: May I see it?

MR. WOLFE: I am referring to P-22, telegram of October 13, 1949.

BY MR. WOLFE:

Q. And did that occur at about the date of the telegram which has been marked P-22, October 13, 1949?

A. I would say it was in around that particular time; yes, (3079) sir.

Q. That telegram which has been marked P-22 notifies the Harrison Company of your appointment by Mr. Maloney, does it not, as the representative of the engineers to negotiate this matter?

A. Yes, sir; it does.

Q. And what then was done pursuant to that appointment?

A. As soon as we were appointed we remained in the same room and had a conference and further discussed the existing conditions, and then we began to make a survey of the contractors involved in the construction of the eastern Turnpike and to determine how many of them were union contractors in other areas, and we found out as best we could where they may be working and operating union projects.

We discovered, as I recall, Harrison had work in Pittsburgh. He had work in Tennessee. Johnson, Drake and Piper had work in New York. I think Mashuda had work at Milwaukee, as I recall it. Myers had some work. Myers from Salem, Indiana, had some work in Pittsburgh. And we made the general check to find out all of the areas in which they were working.

I believe, as I recall, that was on a Wednesday, or, a Tuesday, rather, that the—on a Tuesday that the meeting was first held.

(3080) We then returned to our respective locations and then we set up Pittsburgh as our base of operations, and we then contacted all of our local unions to immediately exert their economic strength in the area to cause the contractors to take note of what was happening in ——

Q. How was that done?

A. Why, by a stoppage of work of their—the various jobs that they had in the various areas. Those jobs were stopped, and as soon as the jobs were stopped we—the contractors began to call into our various offices, and they then arranged to—for a meeting immediately.

The jobs were shut down to New York, at Oak Ridge, Tennessee, and all over the country. I can't begin to enumerate them all.

And they then said, "We would like to have a meeting."

We talked about a place of meeting, and it was suggested then that they meet on neutral territory, which Washington was selected.

We arranged for a meeting on the following Monday. I don't recall the dates, but on the following Monday we met in the Mayflower Hotel in Washington, D. C. Most of the contractors had either a representative or was there in person, some of the contractors. We met with them.

(3081) I had conferred with the local union here as to what the wages scales they were trying to achieve on there, and the conditions, and that was the—at the meeting that was the wage scale that I put to the contractors that was

desired on this work in Eastern Pennsylvania. The other trades, being likewise represented, gave to the contractors their requests.

We sat there through the day, as I recall it, was unable to achieve any progress. I went back to the office and talked with our people at the office, principally Mr. Hill.

We then decided to—that the best thing to do so as to protect the interests of the local union and see that everything could was gotten for them that was possible, and we called Mr. Underwood sometime in the late evening—I I don't recall the time—and asked him if he would come down to Washington for the next morning at the meeting.

Mr. Underwood did come down. I don't recall the time of arrival. It runs in my mind that we stopped by our office first and talked a bit with Mr. Hill and Mr. Fitzgerald, and then we went to the Mayflower for the meeting and we spent through the day in that meeting there, Mr. Underwood presenting the requests of Local Union 542, and we went through that whole day, the other trades doing (3082) likewise.

As I recall it now, after there was a satisfactory arrangements arrived at with the employers, we retired to the laborers' general headquarters, which is located in the Bowen Building, and Mr. Morielli, who is their general counsel, we went in his office, and the document which was finally arrived at was drawn up between ——

Q. By "document" you mean an agreement?

A. Yes, sir.

Q. As to wage scale?

A. Yes, sir, an agreement which was very brief in form, as I recall it, setting forth the wage scales. I think the top wage scale was $2.45—I am not positive—which was prevailing around at that time.

And Mr. Morielli drafted the—this brief understanding, and it was signed by these contractors. There was one draft for each respective union, and Mr. Morielli along with, I believe it was, attorneys representing the other side

there, too, and it was finally drafted and signed. I signed it in behalf of the International for the engineers, and the other representatives of their—of the various trades signed it for their International Union.

As I recall, that only covered the Turnpike. The other work in the area, there was a clause in the agree- (3083) ment which provided that there would be a subsequent meeting with the Union officials to work out an understanding for any other work that the contractors had in the area covered by the eastern half of Pennsylvania.

Q. Mr. Wharton, did you attend the meeting with Mr. Underwood and Mr. McDonald and Mr. Maloney at the Hamilton Hotel in Washington on July 2, 1952?

A. Yes, sir, I did.

Q. Will you tell us what took place at that meeting, as you recall it.

A. As I recall it, it was somewheres late in the afternoon. Mr. Maloney said, "are you going home or are you going to stay in town?"

I said, "Well, I plan to go home."

He said, "Would you mind staying in?" He says, "I am going to meet Mr. McDonald and Mr. Underwood."

And a little later he came and said that he had just received a call that they were tied up in some sort of a meeting here and it would probably be 9 or maybe a little later before they arrived in Washington.

Mr. Maloney, Mr. Gramling and I went out and had dinner, and then we walked around a bit, as I remember, and then went to the Hamilton Hotel and secured a room in the Hamilton Hotel where we could meet.

(3084) Mr. McDonald and Mr. Underwood came in sometime after 9, and we sat there and went through the usual preliminary questions about everything and then got down to the matter in question.

And, as I recall, they reviewed the situation here as they seen it and said that they were making considerable progress and felt that they would have the thing overcome,

that a number of the contractors were breaking away from the association and were signing the agreements, and Mr. Maloney advised them that their only interest in it was to try to be helpful to the local union here, the question of safety and pensions and various phases of the agreement.

Mr. Maloney said to me, "Have you read the safety code, Hunter?"

I assumed the reason he asked me the particular question is because of the activities of ——

MR. FREEDMAN: If the Court please, I object to any assumptions.

THE WITNESS: He ——

MR. FREEDMAN: Just a minute, please.

THE WITNESS: Oh, pardon me.

THE COURT: Well, I suppose your objection is properly taken at this time, but certainly it will eventually come out on examination; but, go ahead. Don't assume anything (3085) at this point.

THE WITNESS: Well, Mr. Maloney handed me the safety code, as I recall it, and asked me what I thought about it, and I read the thing over. I had seen it.

BY MR. WOLFE:

Q. I show you, Mr. Wharton, a document and ask you whether ——

THE COURT: Suppose he finishes his answer. I didn't hear the end of it. You interrupted it before he had a chance to finish.

Read that back to him.

MR. WOLFE: All right. I was going to show him the safety code.

(Last answer read.)

THE COURT: All right. Did you have anything else to say about it?

THE WITNESS: Well, I made this comment regarding the safety code. I said that we were always anxious to have our men work under safe conditions and were for safety conditions, but the provisions as were set forth in this particular safety code providing for a penalty of $500, as I recall the figure, could not be applied as I see it.

I then cited as an example from my interpretation of the safety code that in event that an oiler working on a crane or an engineer working on a piece of (3086) machinery would grease or put gasoline in the machine while it was in operation was a responsibility of that individual, if he was an engineer, and if he was an oiler it was the responsibility of the engineer he was working for not to permit it, and I couldn't see where the contractor could be made liable and subject to a penalty of $500 if one of our own people did something contrary to good safety practices and

BY MR. WOLFE:

Q. Now, I show you, Mr. Wharton, a document which I will ask the stenographer to mark Defendants' Exhibit No. 45.

(Safety Code was marked Exhibit D 45 for identification.)

BY MR. WOLFE:

Q. And I ask you what that is.

A. Well, it appears to be—to me to be the safety code that was attached to the agreements or to the papers that I had seen in this case.

Q. And I show you another document which I will ask the stenographer to mark Defendants' Exhibit No. 46.

(Document entitled "Rider," was marked Exhibit D-46 for identification.)

BY MR. WOLFE:

Q. Does that set forth the contract demands presented by Underwood to the contractors in 1952?

(3087) A. Yes, sir. It sets forth new provisions for—to be embodied in the contract, covers a number of items.

Q. Now, you heard the testimony of some of the plaintiffs' witnesses, did you not, Mr. Wharton, earlier in the trial of this case to the effect that the International Union crammed the safety code down their throats and insisted in effect that the local bargain to obtain that safety code in their contract with the association?

A. Yes, sir. I heard that testimony.

Q. What differences are there between the kind of safety program which was advocated by the International and the safety code which is contained in Exhibit D-44 that has been identified?

A. I would say the safety code is the safety program

Q. Excuse me. That is D-45, I should have said, instead of D-44. Excuse me for interrupting you.

A. The safety program as advocated by the International Union was one that was designed primarily to make the membership of the International Union safety conscious, to instill in their minds the necessity of working and seeing that a job was operated under safe working conditions.

We have found that the reason for our program in those lines—the reason for our program in those lines is that we

have found that regardless of how fast a job might be set up to operate, it is only as fast as the men working (3088) on the job make it, and that was the basis for our program, to instill in our membership, the minds of them, that they should become safety-conscious under any and all circumstances.

Further, the reason for trying to instill that safety-consciousness in them was because we have further studied that many of the accidents occurring at a construction project, strange as it may seem, our membership working on machinery, it is not always our members who are injured or lose their life; it is the other workmen working in and around our machines.

We handle the—operate all of the heavy construction equipment on the machine, on the project, and at all times there is a lot of other mechanics working around us.

We tried to instill in the minds of our membership that they had an additional responsibility, not alone to themselves but to the other workmen on the job by virtue of the position that they occupied on a construction project, and that was the basis of our safety program or accident prevention program, which we prefer to call it, to make the all of our members conscious of trying to become safe in their operations.

Q. Well, with respect to that factor of responsibility (3089) for taking care and responsibility for negligence on the job, and so forth, how did the International's safety program differ from this safety code advocated by the Underwood group?

A. Well, we did—our safety program in no way attempted to place the full responsibility on the employer for the operations of the job to be under safe conditions. We did not advocate penalties or anything as set forth in the safety code of the local union here.

(3090) Q. That is, you did not advocate imposing on the employer a responsibility for the lack of care of the members; is that it?

A. That's correct, yes, sir.

Q. And was the safety program of the International conducted through a series of letters distributed by the International throughout the locals from time to time?

A. Yes, sir, for quite a long period of time on a monthly basis there was a letter sent to all of our local unions dealing with some phase of safety or accident prevention, cautioning them, calling to their attention the necessity of working and operating safely.

In addition to that, there was prepared for our "International Engineer," that is our monthly magazine that goes to all of our membership for whom we have the correct addresses at the general office, and I think there is some 200,000 of those sent out monthly, also carried quite a lengthy article on safety, and most of the time it was featured, being the first article in our magazine. Those were prepared by our general office and published in our magazine. We do not at the present time publish that article by the same people, but the publisher of our magazine and our technical writer writes an article periodically, along with various posters furnished by the National Safety Council, (3091) are used on the back sheet or some prominent place in the magazine.

Q. You were the author, were you not, of most of the articles in the magazine "International Engineer" on the subject of safety?

A. Jointly with one of our other office men, Mr. Herbert Woods. In the early stages of the program he and I jointly prepared the articles, and after he retired I carried on the work of writing those articles myself for quite a period of time, and the letters there were prepared for the general president to send out.

Q. I show you a folder containing copies of certain letters and ask you whether those are the types of safety letters that you referred to as being distributed by the International to the membership of the local unions.

A. This is the monthly letter that was sent out to all of our affiliated local unions monthly.

MR. WOLFE: May we have the file identified if Your Honor please, as a physical exhibit? I don't think it is worth while copying all of these letters into the record.

(Folder of safety letters was marked Exhibit D 47 for identification.)

(3092) BY MR. WOLFE:

Q. I show you a folder containing a number of copies of the magazine entitled "International Engineer." Would you tell me the titles of a few of the articles that you have referred to on the subject of safety and the dates of the issues?

A. Well, these are copies of our International magazine "International Engineer." In the July, 1949, issue the subject of the article is "What About Accidents?" and the topic discussed there was, "The Workers' Responsibilities Are Great."

The August, 1949, issue is "Prevent Accidents Before They Occur."

The purpose of that was, to our thinking in accident prevention, that every accident is one that has a potential to injure or kill someone.

Q. Well, is that the general type of article that appeared

A. Yes, sir, all the way through, and the next one is for the issue of September, 1949, "Follow The Rules And Save A Life."

Q. What is the distribution of that magazine?

A. It is to all of the entire membership of the International Union who keep our office advised of their current address, and I believe the circulation at the present time is

somewhere (3093) around 200,000 or better among the entire membership of our organization.

Q. Was any reference made at the meeting on July 2 to the Underwood demands with respect to a pension plan?

A. It was discussed, but I am a bit vague as to the exact discussions on the specific sections of the proposed agreement or proposed demands.

Q. Do you remember what difference there was between the demands made by Mr. Underwood upon the association contractors with respect to a pension plan as compared with the demands made to the independent contractors at the same time?

A. Well, as I recall having read both, the one in the independent contractors, the understanding with the independent contractors, was contained in the Welfare Trust Agreement, which provided that a study be made by the trustees for that particular welfare fund as to the possibilities of establishing a pension. In the one, demands made on the contractors association, that one provided that there be established a $100 per month pension for members having 20 year membership, I believe, as I recall it.

Q. Is there any local hoisting and portable, such as Local 542, connected with the International Union of Operating Engineers, that has a pension plan?

A. There are such who have in the last few years (3094) negotiated pension plans.

Q. Of hoisting and portable?

A. Yes, sir, some few have in the last few years negotiated.

Q. After supervision was any study made of the subject for Local 542?

A. Yes, sir. We kept in mind the requests of the membership for pension provisions, and on several occasions tried to get something in the agreements that we negotiated. In the agreement negotiated in 1955, I think is the correct date, we caused to be put in the agreement a clause —first I might say the provisions of that agreement were

for an 18½ cents an hour increase over two years, 10 cents the first year, and an automatic 8½ the second year. We caused at that time to be placed in that agreement a clause which provided that any time during the life of that contract that we could establish, by taking any part or all of that 18½ cents to establish a pension program for the benefit of the membership.

When that was discussed everybody wanted to know what would they receive. We advised them that under no circumstances, with the limited knowledge we had at that time, what anyone might get either for the 10 cents, the 8½ cents, or the total 18 cents, we could not advise them as to (3095) what they could get. We said the only thing that we could tell you was that you can get for any part or all of that just what it will buy.

Knowing the interest of people in pensions, we then secured a firm of actuaries to look into the proposition for us. We furnished to them the birth dates of all of the membership that we had. We furnished to them the date of initiation, or the last date of initiation, so as to indicate continuous membership, to the firm of actuaries. I can't recall their name at the moment.

Q. Haggerty Associates, wasn't it?

A. I can't recall it at the moment, Mr. Wolfe. They are local people here, and we asked them to make a survey. We had an experience there as to possible income by taking the income of 10 cents an hour that was coming into the Welfare Fund, and we had a period of five years experience there as to possible income. That period gave the peaks and valleys for full employment and low employment periods, and we furnished them with that information, with the information of the possible income, the dates of birth of each individual member, and the date of their latest initiation in there and asked them to develop several plans based on different ages ——

Q. Were the plans as developed by them then submitted to the members?

(3096) A. Yes, sir, the plan was developed by them—I think four separate plans in number—and the representative of the firm also went around to each one of the district meetings that were being conducted ——

Q. District meetings of the membership?

A. Of the membership, yes, sir, in the respective districts that we have set up, and explained to the membership the plan and what was possible for them to get and answered any questions that the members wished to ask.

Q. And what was the vote of the membership on the question whether ——

A. The next step in that was we secured the services of, I think it was Price Waterhouse, to conduct a referendum among the membership, and the information was sent to them in addition to the explanation at the district meetings, and it was sent to them for a referendum, handled by Price Waterhouse, and I don't recall the exact figure of the vote, but the membership rejected the adoption of the pension plan, and on their rejection of the adoption of the pension plan, the next increase that was automatically due last May of 8½ cents went into effect, and the men took the whole 18½ cents; but the provision is in the agreement that at this moment, if it was the desire of the membership, we could open up that section and create a pension fund, and as I remember the (3097) provisions of taking 8½ cents, the plan would allow something like $1.35, averaged out to about $1.35 per year of membership.

* * * * * *

Q. Mr. Wharton, sometime following the meeting of July 2, 1952, in Washington to which you have referred, did the general office of the International Union receive a telegram from Governor Fine?

A. We received a telegram or letter. I am not sure which it was.

Q. And I show you a document which I will ask to have

marked as Defendants' Exhibit No. 48 and ask you whether that is the communication to which you refer.

(Letter dated July 17, 1952 from Governor Fine to Mr. William E. Maloney, was marked Exhibit D-48 for identification.)

THE COURT: You didn't mark the volume of the "International Engineers".

MR. WOLFE: I thought I would not. It is too bulky, and I thought the oral testimony would be sufficient.

THE COURT: Very well.

(3098) A. Yes, sir, this appears to be a copy of the communication.

Q. Will you read it, please.

A. Under date of July 17, 1952, addressed to William E. Maloney, General President, International Union of Operating Engineers, 1003 K Street, N. W., Washington, D. C.

"At the present time the Pennsylvania Department of Highways has under construction a State Highway program of $17,300,000.00 of contract value in the Philadelphia Metropolitan District of Pennsylvania comprising the Counties of Philadelphia, Delaware, Chester, Montgomery and Bucks.

"Operations on this large program, which means so much to the transportation facilities of Philadelphia and vicinity, are tied up due to a strike against the contractors of the area by Local #542 of the Operating Engineers under the direction of Mr. Roy J. Underwood, President and Business Manager of this Local.

"There have been three strikes in this area during the past four and one-half years which coincides with the tenure of office of Mr. Underwood. The previous strikes never have

had the intensity or duration comparable with the present conditions.

(3099) "We have not had similar strikes throughout Pennsylvania. A bitter feeling has been engendered between Mr. Underwood and the contractors' representatives which apparently cannot be amicably settled.

"Due to the importance of this work to the economy of our State and Nation, we are requesting that an impartial study be made by your office with a view of adjusting the differences now existing so that operations may be resumed on this construction program without further delay.

"J. S. Fine
"Governor of Pennsylvania."

(3100) Q. And did Mr. Maloney reply to that communication?

A. Yes, sir; he did.

MR. WOLFE: Now, I ask the stenographer to mark as Defendants' Exhibit No. 49 a document which I will ask the witness to identify.

(Western Union telegram was marked Exhibit D-49 for identification.)

BY MR. WOLFE:

Q. Is that the reply?

A. That appears to be a reply, a copy of a Western Union telegram which was the reply to the Governor.

Q. Will you read that please.

A. It is under date of July 21, 1952, addressed to the Hon. John S. Fine, Governor of Pennsylvania, Harrisburg, Pennsylvania.

"In reply to your letter regarding the differences between the Contractors Association and our Local Union No. 542, Philadelphia, I have directed that an immediate investigation of the existing problems between the two groups be

made, and assure you we will do our utmost to bring about an adjustment of the differences so as to prevent any further delay to your highway program in the affected area."

(3101) It is signed by William E. Maloney, General President, the International Union of Operating Engineers.

Q. You attended the meeting of Local 542, the membership of Local 542 on August 5 in Philadelphia, did you not?

A. Yes, sir; I did.

Q. And there has been read in evidence as Plaintiffs' Exhibit No. 45 the report that you made to Mr. Maloney at that meeting. Do you recall that?

A. Yes, sir.

Q. And does that report set forth an accurate report and reflect what occurred at the meeting?

A. It does, sir, because, as I recall it, it was prepared shortly after my return to Washington.

Q. And I believe that you counted the number of seats in the hall and then came to the conclusion that the meeting was attended, was it, by between 550 and 600?

A. Somewhere along that line; yes, sir.

Q. What was the total membership of Local 542 at that time?

A. At that time it was somewheres in the neighborhood of 3500, 3600.

MR. FREEDMAN: What did you designate that?

MR. WOLFE: P-45.

BY MR. WOLFE:

Q. Did you deliver the order, Mr. Maloney's order of
(3102) August 11, 1952, to the local to terminate the strike?

A. Yes, sir; I did.

Q. And to whom did you deliver it?

A. I delivered it to Mr. Underwood.

Q. Did you have any conversation with him at the time?

A. Yes. I had brief conversation with him when I delivered it to him.

Q. What was said?

A. Well, I presented it to him. I said, "There is a letter from the general president," and we briefly discussed the problems here, and he mentioned about the number of contractors that he was getting signed up, and I—that were broken away from the association, and as near as I can recall, my reply to it was something like this:

I says, "Well, Roy, you know what we think of an individual member who breaks away from the union and goes with the contractor when there is trouble." I said, "Those fellows who break away from the association in my mind are in the same category as the individual member who would break away from the union."

Q. Now, did you also deliver the general president's order of August 19, 1952, invoking supervision?

A. Yes, sir; I did.

Q. Were you accompanied by any other people at the time (3103) of delivery of that order?

A. Oh, four or five, as I recall.

Q. Who were they?

A. Well, there was Mr. Duffy, Jack Smith, Jack Carter, Pete Weber, and I believe Joe Gatti.

Q. To whom did you deliver that order?

A. To Mr. Underwood.

Q. At the office of the local?

A. At the office of the local; yes, sir.

Q. Did you have any conversation with him at that time?

A. Why, I presented him the order of supervision and—I don't know—other than say I was appointed the supervisor or something. The conversation at that moment was not too lengthy.

Q. Now, you heard the testimony of some of the plaintiffs' witnesses to the effect that some of the people who accompanied you carried guns; is that right? Did any of them have any weapons with them?

A. Absolutely not. I would say positively none of them had guns.

Q. Do you recall the testimony of Mr. Underwood that he was denied the right to use the telephone?

A. Yes, sir. I recall that testimony.

Q. What are the facts with respect to that?

(3104) A. I recall of no request to use the telephone. If there had been, the request wouldn't have been necessary. He could have picked up the phone and used it.

Q. Now, when you took over the affairs of Local 542 on August 19, 1952, did you arrange for any meeting of the business agents or the Executive Board of the local?

A. Yes, sir. After I had given Mr. Underwood the order of supervision, after we had been there a little while, I think I asked him if he would take me around and introduce me to the people in the office, and which he did, and we went back and he introduced me, and, as I recall, he gave me a key to the office, and then I asked him if he would call a meeting of the Executive Board of the local union for the next morning so that I might advise them of the situation.

Q. Did you have such a meeting the next morning?

A. Yes, sir. We had a meeting the next morning in the Broadwood Hotel, which is just up the street from the office.

Q. Were all the members of the Executive Board of the local there?

A. As I recall, they were all there; yes, sir.

Q. Were the business agents there?

A. The business agents and all the other members of the Executive Board.

Q. What did you tell them with respect to your plans as (3105) supervisor?

A. As I recall, I read them the letter and I advised them that in accordance with the terms of the letter I was the supervisor, and I was there to work with them and cooperate with them to see if we couldn't get the problems straightened out and get the feeling that was existing here in the

area cleaned up so that we could get the local union back to functioning as it should. I advised everybody that they were now being removed from their office, advised the business agents who were present that they were to continue on just as they were, and just a general statement to them. I was there as a supervisor and I wanted to cooperate and I wanted their cooperation to see if we could undo the things that, or, the harm that had apparently been done.

Q. And was an assistant supervisor selected at that meeting?

A. Not at that meeting—at a later meeting.

Q. How was that done?

A. Mr. Underwood and everybody remained on the pay roll until after the trial findings, and then Mr.—we called a meeting—I believe it was on a Sunday, about 2 or 3 o'clock in the afternoon—and I told them that—what I wanted to do, and I said, "It will be necessary to have an assistant supervisor," and I felt that there was certainly (3106) qualified people in the local union there to fill that job, and all I wanted to do was to have them select someone to act as assistant supervisor, and all that I asked of him was that he would go along and respect the constitution.

After some preliminary questioning back of me, why, then I asked them to give me their preference, and they asked for a few minutes' recess, and I—after a while they did take that recess, and we reconvened, and they took a vote.

There was, I believe, four or five names submitted, and I think there was either 18 or 19 present. They took a vote and the Executive Board selected Mr. Charles—I think his first name was Charles—Denoncour to act as assistant supervisor and work with me, and that was—then I think that was on a Sunday, and I think on Monday he assumed his duties.

Q. And he continued to act as assistant supervisor until he resigned sometime subsequently?

A. Yes, sir. He became ill and asked to be relieved.

Q. And Mr. Lavery was then appointed?

A. Then I selected Mr. Lavery, who was the senior business agent and who had been business agent before supervision, and he being the senior business agent, I then selected him to act in Mr. Denoncour's place.

Q. Mr. Wharton, did you attend the hearing on the charges (3107) against Mr. Underwood held by the General Executive Board in New York on September 17, 1952?

A. Yes. I was at the New York meeting.

Q. And you were present in court when the report or the minutes of that, of the Executive Board with respect to that meeting, which were marked P-59, were read, were you not?

A. Yes. I was in court all through the session here.

Q. And does that report state as nearly as you can recall it what occurred at the meeting?

A. I would say yes, sir.

Q. Do you remember the reference in the report to I think it was Mr. Delaney who said that he asked Mr. Underwood after the hearing whether he had had a full and fair hearing? Do you recall that question being asked?

A. Yes, sir. I remember Mr. Delaney asking Mr. Underwood that question.

Q. And what did Mr. Underwood say?

A. Mr. Underwood replied that he had.

Q. All right.

Were you at the meeting of the General Executive Board in Miami in February, 1953?

A. Yes, sir.

Q. Do you recall that, as testified during the plaintiffs' case, the appeal from the order of supervision was listed for (3108) a hearing before the Board at that session?

A. Yes, sir; I do.

Q. Did Mr. Underwood or anyone in his behalf appear at that meeting?

A. To the best of my knowledge, no one appeared, sir.

Q. I show you the minutes of the General Executive Board, the International Union, with respect to that meeting, and ask you whether these are the official minutes of the General Executive Board, and I ask that the minutes be marked as Defendants' Exhibit No. 50.

(Copy of the official minutes of the General Executive Board of its session in Miami for February 10 to February 12, 1953, was marked Exhibit D-50 for identification.)

BY MR. WOLFE:

Q. Is Exhibit D-50 a copy of the official minutes of the General Executive Board of its session in Miami from February 10 to February 12, 1953?

A. I would say it is, sir.

Q. I call your attention to what is referred to in the minutes as case No. 2 on pages 4 and 5 of Exhibit D-50 and ask you whether that is the official record of the proceedings of the General Executive Board with respect to this matter at that meeting.

(3109) MR. FREEDMAN: Objection to that, Your Honor. It is purely a self-serving declaration.

THE COURT: Objection overruled.

THE WITNESS: Yes. I would say this is the minutes and the events of that meeting in connection with this case.

BY MR. WOLFE:

Q. Would you read that, please.

MR. FREEDMAN: The same objection, Your Honor.

THE COURT: Same ruling.

THE WITNESS: This is on page 4, title, "Case No. 2, pending appeal of Local Union No. 542 to lift supervision."

"The matter of the pending appeal filed on behalf of members of Local Union No. 542 to the General Executive Board seeking to lift International Supervision came before the Board. General Secretary-Treasurer Gramling called to the attention of the Board the fact that the name of but one proponent was signed to the appeal as and for the members and that no member of Local No. 542 had as yet advised him of being present or intending to be present at this meeting of the Board for the purpose of supporting the appeal, although due notice had been given.

(3110) "One of the members of the Local Union No. 542 who was visiting in the community was present and spoke to the Board in connection with the pending appeal, stating that he believed in following the Constitution on appeal matters and that he was interested in seeing that the appeal in this case was retained by the Board and thoroughly investigated. He felt that the Board was better qualified to determine the issue than anybody else, and he wanted it known that he had nothing to do with the filing of the current lawsuit against the International to lift supervision and that he believed it be wrong and a mistake.

"Upon motion duly made and seconded the Board unanimously resolved to continue the appeal as a pending case. The continuance so granted being for the purpose of giving proponents further opportunity to be heard in support of the appeal and to permit time for necessary reports on contingent matters connected with supervision over the Local Union and its welfare to be made and submitted to the General Executive Board. Whereupon the appeal was ordered continued for further hearing. So ordered."

Q. Does Case No. 1, as referred to in the minutes of that meeting, also refer to this matter?

(3111) A. Case No. 1 as listed here does apply to 542.

Q. What is Case No. 1?

A. Case No. 1 is titled, "Report on Local No. 542."

Q. Would you read that, please.

A. "General President Maloney laid before the Board his report on conditions existing in Local Union No. 542 at Philadelphia, under Supervisor Hunter P. Wharton, outlining the pending lawsuit filed by Underwood against the International seeking to have himself restored to office, etc., and the pending suit filed by Dawson and others against the International to compel the lifting of supervision. In his report the accomplishments during supervision were gone into, with particular reference to the result of arbitration before Dr. Taylor involving the conflicting claims of the members of Local Union No. 542 against the Contractors' Associations, in which it was shown step by step how an orderly and effective presentation of both sides before Dr. Taylor had resulted in an eminently fair decision, following which, contract between Local Union No. 542 and the Contractors' Associations had been entered into and was now in full force and effect.

"The matter of conflict between several Welfare (3112) Plans of Local Union No. 542 was also gone into, in which it appeared by continuous and effective negotiations between all interested parties a satisfactory agreement to merge all Welfare Plans into one plan had been worked out and submitted to Federal Judge Clary and approved by him and that as a result the said plans had been merged and were now proceeding as one general Welfare Plan to the satisfaction of all parties affected.

"The report further touched on the economic situation in Local Union No. 542 and the desire of certain of its members for a separate charter, also on the fact that basic By-Laws for the government of Local Union No. 542 had apparently never been approved and that the previous motion sought to be adopted several years ago by a meeting of Local Union No. 542 designed to increase the term of local officers from one year to five years had been illegally passed in that it was never adopted as a By-Law nor with the approval of the General President. The report further

dealt on the suggested advisability of appointing a committee to investigate the By-Laws situation and other conditions in Local Union No. 542 and to report recommendations thereon back to the Board."

(3113) Q. Mr. Wharton, did you attend the quadrennial convention of the International Union of Operating Engineers in Chicago last year?

A. Yes, sir; I did.

Q. Was Mr. Underwood there at that meeting, at that convention?

A. Yes, sir; he was.

Q. Were there any other members of Local 542 who appeared as plaintiffs during the course of this trial present at that meeting, at that convention?

A. Yes, sir. There was Mr. Dawson was there, and Mr. Acchione was there as a delegate to the convention. Mr. Dawson was not a delegate. And there was one other member of 542 who they told me was a member. I don't know his name, though.

Q. Was any effort made by any of them or any other representative of Local 542 to press upon the floor of the convention an appeal from the order of supervision?

A. No, sir; there was not.

Q. Mr. Wharton, shortly after your appointment as supervisor the arbitration pursuant to the stipulation made in the case before Judge Grim was begun, was it not?

A. Yes, sir.

Q. What did you do to prepare for the conduct of the (3113a) hearings for Dr. Taylor?

A. Well, I asked first Mr. Underwood and the other members of his negotiating—former negotiating committee, to give me all of the data that they had and to work with me in the presentation of the local union's case to the doctor, Dr. Taylor, the arbitrator.

(3114) Q. I show you several letters and I will ask you to identify them. I show you first what purports to be a copy of a letter dated September 5, 1952, addressed to Mr.

Underwood, which I shall ask the stenographer to mark as Defendants' Exhibit No. 51.

(Letter dated September 5, 1952, from Hunter P. Wharton to Roy J. Underwood, was marked Exhibit D-51 for identification.)

Is that a copy of a letter which you wrote to Mr. Underwood?

A. Yes, sir, it is.

Q. Will you read that letter, please, Mr. Wharton.

A. It is a letter under date of September 5, 1952, addressed to Roy J. Underwood, International Union of Operating Engineers, Local 542.

"Dear Mr. Underwood:

"In conversations that I have had with you since August 19, 1952 I have urged you to cooperate in the forthcoming arbitration before Dr. Taylor by submitting all the data that you have compiled supporting demands of the Union, and by appearing and testifying in person at the arbitration. At first you offered full cooperation in these matters, (3115) but a few days ago you announced that you could not testify, and you gave as your reason that the office of Montgomery, McCracken, Walker and Rhoads, which has been retained by me as International Supervisor cannot adequately represent the Union because it represented the International and Mr. Maloney in the equity proceedings in the Federal Court, at which time the interests of the Local Union on the one hand, and the International and Mr. Maloney on the other, were adverse. As of yesterday, you agreed to submit the data you have compiled, but you still refuse to cooperate by appearing at the arbitration and testifying voluntarily for the reason heretofore mentioned.

"I have no alternative but to submit this written demand upon you that you appear at the arbitration and testify because if you fail to do so, you may jeopardize the interest of the Local. The reason given by you for not appearing

in person at the arbitration and testifying voluntarily is totally without substance. The firm of Montgomery, McCracken, Walker and Rhoads is in every sense qualified to advance the interests of the Local, (3116) but it will be embarrassed in the performance of its service unless you fully cooperate, because, as you know, we are pressed for time in this matter and it must have the fullest cooperation from you as well as from everyone else, as it hopes to be prepared in time for the arbitration, which begins this coming Tuesday, September 9, 1952.

"Furthermore, you and your attorney, Mr. Freedman, agreed to the terms of the arbitration and you pledged to Judge Grim that you would cooperate in the arbitration. You are directly violating that pledge of cooperation.

"Very truly yours,
"Hunter P. Wharton.
"Supervisor."

Q. I also show you what appears to be a copy of a letter addressed to Mr. Pantaleo and Mr. Leone, dated September 8, 1952, which I will ask to have marked as Defendants' Exhibit 52 and ask you to identify that.

(Letter dated September 8, 1952, from Hunter P. Wharton to Mr. Peter Pantaleo and Mr. Jerry Leone, was marked Exhibit D-52 for identification.)

A. This is a copy of the letter I sent to Mr. Pantaleo (3117) and Mr. Leone, business agents, whom I was advised were members of the previous Negotiating Committee.

Q. Will you read that letter, please.

A. This is under date of September 8, 1952:

"Mr. Peter Pantaleo
"Mr. Jerry Leone
"Business Agents
"Local 542, IUOE
"Gentlemen:

"Having been informed by Roy Underwood that you

were a member of the Local negotiating committee I told you on Friday, September 5, of the arbitration hearings which are to begin before Dr. Taylor tomorrow, Tuesday, September 9, and of the importance to Local 542 that the members of the negotiating committee and the Local officers cooperate in every possible way at those hearings to produce the testimony and arguments necessary to establish the Unions' demands. I told you also that Roy Underwood had refused to cooperate at these hearings either by appearing or by testifying, and that this made it all the more important that I be given the full cooperation of the negotiating committee and the Local officers.

"It is of course extremely important to the (3118) Local Unions and their members that we produce the strongest possible case before the arbitrator in support of the Unions' demands. In order to do so we should have the full cooperation of the Local officers and negotiating committee. I am writing this letter to impress upon you the importance of the cooperation which I have requested and with the expectation that you will attend the hearing and cooperate in every way you may be able to do so.

"Very truly yours,
"Hunter P. Wharton,
"Supervisor."

Q. In addition to attempting to obtain the cooperation of Mr. Underwood and the business agents, did you also attempt to obtain the cooperation in the arbitration proceedings of the members of the Executive Board?

A. Yes, sir, I did.

Q. And I show you another document which I will ask the stenographer to mark as Defendants' Exhibit No. 53 and ask you to identify that if you will, please.

(Document addressed "To the Members of the Executive Board, Local 542," undated, was marked Exhibit D-53.)

(3119) A. This is a copy of a communication I sent to the members of the Executive Board of Local 542.

Q. Will you read that, please.

A. "This memorandum is delivered to you in order that you may have a written statement of the situation concerning the arbitration of the Unions' contract demands. The arbitration hearings before Dr. Taylor are to begin tomorrow, Tuesday, September 9. I have urged Roy Underwood to cooperate at the arbitration hearings by submitting all the data he may have compiled supporting the Unions' demands and by appearing and testifying in person at the hearings. Although he agreed to the terms of the arbitration and at first assured me of his full cooperation, he has merely delivered to me certain papers from his file but has refused to cooperate by appearing and testifying at the arbitration hearings.

"As you will recall, I told the Executive Board at the meeting held August 20, 1952 that the arbitration hearings would be conducted by me together with Roy Underwood of the negotiating committee. Since Brother Underwood has refused to cooperate I have made the same request for co- (3120) operation of Brother Leone and Brother Pantaleo, two of the members of the Negotiating Committee. I have put this request in writing and attach a copy of my letter to them.

"I am calling the whole matter to the attention of the members of the Executive Board because of the importance to the Local Unions and its members of full cooperation to the end that we can produce the strongest possible case before the arbitrator in support of the Unions' demands.

"Very truly yours,
"Hunter P. Wharton,
"Supervisor."

Q. Did Mr. Underwood appear at any of the hearings or conferences with Dr. Taylor in connection with these arbitration proceedings?

A. No, sir.

Q. Did he give you at your request some documents with respect to the union's demands?

A. Yes, sir, he gave me copies of some.

Q. What did you obtain from him?

A. Well, as I recall, copies of the previous agreement and this list of the union's demands on the Contractor's Association and maybe a few other papers. I don't recall (3121) the exact nature of them, sir.

Q. In response to those letters, three letters which you have read, what individuals did cooperate, connected with Local 542, in the hearings before Dr. Taylor?

A. Mr. Pantaleo and Mr. Denoncour.

Q. During the course of those hearings before Dr. Taylor, Mr. Wharton, what demands, contract demands, did you present on behalf of Local 542?

A. We presented, to the best of my knowledge, every one of the demands that had been originally asked by the local union.

Q. And did those hearings ultimately result in a decision by Mr. Taylor which determined all of the terms and provisions of the collective bargaining agreement to be executed by the union with the associations?

A. Yes, sir.

Q. And is this document which I show you and which I will ask the stenographer to mark Exhibit D-54 a copy of the collective bargaining contract as determined by Dr. Taylor in his decision in the arbitration proceedings?

(Document headed "Agreement and Working Rules," drafted by Dr. Taylor following arbitration proceedings, was marked Exhibit D-54 for identification.)

A. From the dating and its general appearance, I would (3122) say it is the document that was drafted by Dr. Taylor following the arbitration.

Q. Do you recall approximately the date of his decision with respect to the collective bargaining contract?

A. It runs in my mind it was somewhere past the middle of October, about the middle of October.

Q. Of 1952?

A. Of 1952, yes, sir.

Q. Now, that contract, in accordance with his decision, was made retroactive, was it not, to May 1, 1952?

A. Yes, sir, it was.

Q. And did it provide that the wage increase which was effectuated by that contract should also be retroactive to May 1, 1952?

A. It did, yes, sir.

Q. What was the term of that agreement?

A. For two years, using the May 1 date.

Q. Running from May 1, 1952, to April 30, 1954?

A. That's right, yes, sir.

Q. Does it provide for the right, however, to open the contract on the subject of wages as of May 1, 1953?

A. For wages, yes, sir.

Q. What wage increase was effected as a result of that agreement?

(3123) A. You mean by the opening clause or the original?

Q. The original contract.

A. The original was 40 cents, the wages allowable under the Wage Stabilization Board.

Q. That is, the contract which you just referred to and which was the result of Dr. Taylor's decision resulted in an increase of 40 cents per hour to the members of Local 542; is that correct?

A. Yes, sir, over the previous agreement with the association.

Q. Was there one category where there was one cent difference, 39 cents?

A. Yes, that was between the highway—there was one cent differential there.

Q. For one group of employees, and as to all the others it was 40 cents?

A. Yes, sir, the one group, I think it is the highway, is one cent less. That was the established differential.

Q. What was the situation at the time of the hearings before Dr. Taylor with respect to Local 542's Welfare Fund, Mr. Wharton?

A. The welfare funds at the time we went before Dr. Taylor, there was a fund known as the Broad Street Fund, (3124) another one termed I think it was the Fidelity Fund, and then under the terms of Judge Grim, the action before Judge Grim, there was an interim fund established which for identification was called the Dr. Taylor Interim Fund. There was three separate and distinct funds.

Q. That was established by Judge Clary in an earlier case, was it not?

A. I am not too familiar, but there was three funds at that time.

Q. Now, what was accomplished as a result of the arbitration proceedings before Dr. Taylor with respect to those three Welfare Funds?

A. The three funds were merged into one fund, and a new trust agreement covering the one fund was developed and approved by both sides and I believe submitted to His Honor Judge Clary for final approval.

Q. And the new Welfare Fund Deed of Trust was executed, do you recall when? January 8, 1953?

A. About that time. I wouldn't fix the date.

Q. I show you a document which I will ask the stenographer to mark as Defendants' Exhibit No. 55, and ask you whether that is a printed copy of the executed Deed of Trust which contains the provisions as determined by the decision of Dr. Taylor and confirmed (3125) by this Court.

(Document headed "International Union of Operating Engineers Welfare Fund of Eastern Pennsylvania and Delaware" was marked Exhibit D-55 for identification.)

A. Yes, sir, I would say it is.

Q. Following the execution of that agreement, that Welfare Fund Trust Agreement, the Board of Trustees of the

Welfare Fund created by that agreement prepared a booklet, did they not, which I will show you, setting forth the various types of benefits to the members of Local 542 resulting from the trust agreement?

A. Yes, sir, the Welfare Trustees prepared such a booklet.

Q. I show you a booklet which I shall ask the stenographer to mark as Defendants' Exhibit No. 56, and ask you whether this is the booklet describing the benefits of the membership under the Welfare Fund Trust Agreement as issued in 1953.

(Booklet entitled "International Union of Operating Engineers' Welfare Fund of Eastern Pennsylvania and Delaware" was marked Exhibit D-56 for identification.)

A. Yes, sir, that's a copy of the booklet which was prepared and distributed to the membership of the local (3126) union.

Q. What did you find the financial condition of Local 542 to be when you took over supervision, Mr. Wharton?

A. As I recall ——

MR. FREEDMAN: If the Court please, I object to any oral testimony so long as the records are available, and I am sure that they have been, in the local office.

THE COURT: Objection overruled.

A. As I recall, the amount of cash money there was a few dollars over $12,000. I don't remember the exact figure, but twelve thousand some odd dollars.

BY MR. WOLFE:

Q. What was the first step you took with respect to determining the amount of cash and other assets held by Local 542?

A. Well, as soon as I assumed supervision I immediately checked who the individual was that had been auditing the books, and I found his name, and I immediately had this auditor make the check of the books and records up to the day that I took over, so as to protect both Mr. Underwood and myself, and then from that period on I employed the firm of Arthur Young to make a quarterly audit. (3126a) and they have made a quarterly audit for each quarter since August 19, 1952.

(3127) Q. I show you a document which I shall ask the stenographer to mark as Defendants' Exhibit No. 57.

(Report on Examination, International Union of Operating Engineers, Local No. 542 and its Subdivisions, for the Period July 1 to August 19, 1952, was marked Exhibit D-57 for identification.)

BY MR. WOLFE:

Q. And I ask you to identify that, please.

A. This is the copy of the audit made by Mr. John T. Egan, for the period of July 1 to August 19, the day I assumed the supervision of the local union, bringing the accounts or recording the accounts up to that time.

(Report on Examination, International Union of Operating Engineers, Local No. 542, for the Period August 19, 1952, to December 31, 1952, was marked Exhibit D-58 for identification.)

BY MR. WOLFE:

Q. I show you another document which has been marked D-58 and ask you to identify that, please.

A. This is the copy of the audit made by Arthur Young & Company beginning August 19, picking up where Mr. Egan had left off and carrying on for the period that I took over

supervising. Report on Examination, International Union of Operating Engineers, Local 542 and its Subdivisions, (3128) for the period July 1 to August 19, 1952.

Q. Is it a statement for the period from August 19 ——

A. For the period from August 19 to December 31, 1952.

Q. 1952. Now, the bank balance which was, I believe, at the Girard Trust Company to the credit of Local 542 as of August 19, 1952, has since been restricted, has it not?

A. Yes, sir. The original amount that was in there has lain there and has not been touched.

Q. That is because Mr. Underwood's signature is required to draw against that fund; is that correct?

A. Yes, sir. We requested release and it was not given.

Q. What about the bonds, the United States bonds that were part of the assets of Local 542?

A. The bonds were likewise tied up in the bank, in the safe deposit box of the bank, which required the signature, I think, of Mr. Underwood and Mr. Mogan, and that likewise was tied up, and the only opportuntiy we had to see or get at those at all was during a period when the bank moved the location of their safety deposit boxes. Mr. Freedman, with Mr. Underwood and Mr. Trescher from your office, and myself, went with the bank officer and made the transfer then, and we took a note of the bonds that were in the box; but it is likewise tied up.

Q. But that safety deposit box is still subject jointly (3129) to Mr. Underwood's signature so that it also is restricted, is it not?

A. That is correct. Yes, sir.

Q. And that safety deposit box contains not only bonds of the local but of the death benefit fund of the local?

A. That is correct, sir.

Q. Following the execution of the collective bargaining contract as determined by Dr. Taylor in his decision, what was the next contract negotiation that you conducted during supervision?

A. Well, the next one would have been at the expiration

of the first part of that agreement, which would have been for May 1 of 1953.

Q. And what was accomplished in those negotiations, what result? What agreement was made?

A. There was an addendum made to the agreement, as I recall, for 20 cents an hour increase.

Q. I show you a document which will be marked Defendants' Exhibit No. 59.

(Addendum dated July 10, 1953, to agreement and working rules dated October 23, 1952, by and between Local Union 542, 542-A and 542-B, International Union of Operating Engineers, AFL and General Building Contractors Association, Pennsylvania Excavators Association and Con (3130) tractors' Association of Philadelphia was marked Exhibit D-59 for identification.)

BY MR. WOLFE:

Q. And I ask you to identify that.

A. This is a copy of the addendum to the agreement, working rules, dated October—let's see—the addendum dated July 10, 1953, to the agreement and working rules dated October 23, 1952, between the local union and the Contractors' Association provides for a 20-cents-an-hour increase for the year of 1953, that would be.

Q. Up until April 30, 1954?

A. That is correct. Yes, sir.

Q. Then what was your next negotiation with the representatives of the association?

A. That would have been for the period from 1954-1955.

Q. What agreement was negotiated for the period from May 1, 1954?

A. Provided for a 10-cents-per-hour increase.

Q. 10-cents-per-hour increase. Was that also an addendum?

A. Yes, sir. As I recall it, it was—that was the pattern and that was the rate that we ——

Q. And then effective as of May 1, 1955, did you negotiate the agreement which has been marked for identification as Exhibit D-31?

(3131) A. Yes. This is the booklet prepared from that agreement.

Q. And that covers what period of time?

A. That covers from 1955 up to the 1st of May of this year.

Q. Now, does that cover highway construction, Mr. Wharton?

A. This covers highway construction in the five counties here; yes, sir.

Q. You heard the testimony given by some of the plaintiffs' witnesses with respect to the alleged reduction of wage rates by I think the testimony was a dollar or in the neighborhood of a dollar concerning highway construction in Delaware?

A. Yes, sir.

Q. Was that the testimony as you heard it?

A. I heard that; yes, sir. I was here.

Q. Will you tell us what the situation was with respect to highway construction.

A. Well, the situation, as I know it, sir, there has been covered by the general agreement in Delaware an agreement covering highway building and heavy, where to the best of our knowledge and information we could get never any of the contractors, who were party to that agreement, never did any highway work. It was ——

Q. Why was that?

A. Because it was a building chapter.

Q. I didn't understand that for the moment.

(3132) A. It was a building chapter or a building group of contractors and none of them did any highway work.

We have since we have been in here, and I recall distinctly shortly after I was here, Mr. Dawson, who was the business manager or the business agent in the Delaware area, explained the situation to me and asked me what

could be done and was he at liberty to try to get those contractors together to see—that is the road contractors—to see if something could be done.

After listening to his explanation I said, "Well, certainly. If there is anything that can be done to get them together so that we might get the work for the membership, that is fine."

There had been a couple of meetings off and on. I attended one myself of this group of non-union contractors down there that was arranged, I believe, by Mr. Edwards and Mr. Denoncour. We were never able to work anything out with them.

The state highway specifications ——

Q. By that you mean you tried to persuade them to work on a union basis ——

A. On a union.

Q. —rather than on a non-union basis?

A. On a union basis; yes, sir.

(3133) We were never able to get them to give any consideration to it, and we had been troubled with that non-union condition there all throughout, prior to my coming in here and through my period in here, and all of the work was going to non-union contractors, and the rates under this here provided $3 and something per hour. The highway specifications as set forth in the specifications to bidders in the State of Delaware was a dollar and a half, dollar and a half per hour for the skilled mechanics against this rate of $3.60 or $3.70 per hour.

Q. What was the result of that difference?

A. The result of the difference was that the contractor who was in contractual relationship with us was in a non-competitive position and was unable to secure any work, and it was all going to the non-union contractor, with the result that I would say with the exception of a few small jobs every job in the State of Delaware on highway had gone to non-union contractors who did not employ any of our people.

So as to be able to try to do something to get the work for our people and put our contractors in a competitive position, we advised our business agents in that area to tell the contractors to try to get the job so that they could employ our members, and we told them at (3134) this job that was referred to in the testimony, previous testimony, we had worked out a program here in the outlying districts which provided for $2.80 plus 10 cents welfare in Pennsylvania; so we got one of the contractors to try to get one of the jobs down there, and that particular job he did get ——

Q. You mean in Delaware?

A. In Delaware; yes, sir. He got that particular job, and we told him to try to get the job under this $2.80 and 10 cents that we had established in the outlying districts of Pennsylvania.

He did get it, and then we tried to furnish him men who were members of our union to the job, and substantially what happened there was instead of reducing the wages, the specification rates of $1.50 and the prevailing rates that was being paid in Delaware was raised from $1.50 to $2.80 plus 10 cents welfare.

Q. How soon approximately after you were appointed supervisor did you hold a membership meeting of Local 542, Mr. Wharton?

A. I was appointed supervisor on August 19, and then we went into the arbitration with Dr. Taylor.

On October 9, I believe, of 1952, I became ill and went down here from the arbitration with Dr. Taylor (3135) and the next morning I was rushed to the hospital and operated on, and I was able to come back here. As soon as I was able to come back, I called a meeting for the 12th day of November, the day after Armistice Day, and that was the first meeting.

Q. Where was that meeting held?

A. That was held in the Broadwood Hotel.

Q. Will you tell us what occurred.

A. Well, the purpose of it, the primary purpose of the

meeting was to re-establish the meetings and keep the membership informed, and that particular meeting was called as quick as I could get back here to give them a detailed report of my findings of the situation as I saw it in the area, and what I wanted to do to try to correct it, and to give them the report of the results of Dr. Taylor's agreement that he prepared and from the arbitration proceedings.

Q. What occurred at that meeting? Were you able to give your report?

A. Well, there was quite a—quite a crowd there. I don't know the exact size of the room, but it was—I was able to give the report from 8 o'clock until, oh, 11, 11:15, or something of that kind, which normally it could have been delivered in possibly an hour, an hour and a half at the most, because of the series of interruptions that took place in my trying to deliver the membership a report.

(3136) Q. Who were the people who tried to interrupt you in the delivery of your report?

A. Well, there was quite a few of them, including—oh, if you name them, it would be, as I remember, Mr. Acchione, Russell, and ——

Q. Most of the people who testified here in this case were at that meeting?

A. Most of those individuals who testified here were in attendance at that meeting and sat in the front part of the hall, and every time I would attempt to continue with the report there would be an uprising among them trying to question me, why don't I do this, why don't I do that, and we would get them to sit down, then, and I would go ahead maybe for ten minutes, and there would be another series of interruptions, and that went on all through, and the provisions of the local union was that they had an adjournment hour of 10 o'clock, and I told them that I was not going to use that rule that they had there of adjourning at 10 o'clock, that I had ample patience and time and I was going to stay with them until I gave them the report and would answer any questions that any of them had to ask me following my rendering of my report to them.

Q. And when was the next meeting held after that?

A. Oh, I would hesitate to say the date, Mr. ——

(3137) Q. Well, I mean approximately.

A. I believe the next meeting was another—we had established regular meetings again at that time. I believe the next one was held also at the Broadwood Hotel in the same room; but I would just hesitate to give you a date, because I may be—it was not too long a period after that.

Q. Well, was there a period when the membership meetings were discontinued?

A. Yes, sir. There was a period there.

Q. Approximately when did that period begin?

A. Well, that followed, I would say, that next meeting. I can't just ——

Q. Following the second meeting?

A. Yes, sir. I can't bring dates to place there, but that was the night that ——

Q. Was it in March of 1953?

A. It probably could have been that date. I don't know whether we had any meetings in between that, that particular ——

* * * * * * * * *

(3138) MR. WOLFE: Will the reporter read the last question.

(The reporter read as follows:

"Q. Why were the meetings discontinued after that last one?")

A. Because of the disturbances that occurred outside of the meeting. There was some argument in the hall and then there was some disturbance outside, and because of the disturbance that started inside the hall there and couldn't get any order, we adjourned the meeting.

BY MR. WOLFE:

Q. Which meeting is that?

A. This is the last meeting that was referred to, my second report meeting, might I call it.

Q. Sometime in March, 1950?

A. I think that was around the time, yes, sir.

Q. Will you tell us what took place at that meeting?

A. Well, Mr. Lavery, another young fellow in there whom I asked if he would act as secretary, because we had no secretary—I think his name was Smith. Mr. Lavery and (3139) myself I think were all that were on the platform—I don't know of anyone else that was on the platform—and we opened the meeting, Mr. Lavery opened the meeting, and he was going to conduct the meeting, and some questions arose on the floor as to some branch members being present and some members from other local unions being present.

The question was raised about them being there, and we had not made it a practice to put either the branch members out of the meeting, and we had no right to put someone out who had a parent body card from some other local union. So we was requested to cause those people to be removed from the hall or to leave the hall, and the question was raised as to having an executive session of the local union; which was something completely new to me in my time in the organization. I had never heard of any such thing in any meeting I had ever been at, and I knew of no reason why we should give such a motion consideration, and then an argument started in the back of the hall between several of the members, and I did not know the one individual who was cross-firing across the floor at the other, and it got bad, and so I decided to adjourn the meeting at that point because we could not get any order.

While we were up still on the platform and the group was mulling around, some of them had gone out, we were (3140) gathering up our papers, material that we had with

us at the meeting, and this one member came in. Apparently by his looks he had been into a fight out in the back some place. It did not occur in the meeting hall, and we adjourned the meeting and left shortly thereafter. I mean we left shortly after, already having adjourned the meeting.

The next thing I knew I was served with a summons to appear at court charged with a conspiracy, and we were up at one of the Magistrates Courts—I don't recall the Magistrates Court—and the case was dismissed as just an incident occurring in a union meeting.

The next thing I knew I was before, I think his name was Judge Sloane, who was sitting, it was described to me, as a committing magistrate or something—I am not too familiar with the terms—but, anyhow, the charge of conspiracy against me was thrown out, and the reason the meeting was discontinued at that time was for that reason. I certainly couldn't see where I as supervisor, trying to conduct a meeting to enlighten the membership of the conditions in the area and what was happening and what we were trying to do, because some disturbance started in some part of the hall or outside the meeting hall afterwards, that I should be subject to having a conspiracy charge for allegedly pointing the finger at somebody, because I have a habit of (3141) making gestures when I am talking to a group, and certainly I didn't even know the individual, and that is the reason the meeting was discontinued.

Q. You heard the testimony of Mr. McCarty, during the production of the plaintiffs' evidence, with respect to the incident he referred to?

A. Yes, sir.

Q. And the testimony by him and perhaps some others that you pointed a finger at him? Do you recall the testimony?

A. Yes, sir, I do.

Q. What were the facts with respect to that?

A. The facts as I know them, sir, were that there was a disturbance of cross-fire in the back of the meeting and ver-

bal cross-fire between the members occurred and we couldn't get order. This one was jumping up to make a motion and another one jumping up to make a motion, and because of the disturbance we felt it was impossible to have a meeting. We adjourned, and then this disturbance outside some place took place, and after this lad came up in front of me I was still on the platform, and he said, "Look what the International done to me."

I said, "What do you mean? I don't understand what you are talking about," or words to that effect, and that was about the sum and substance of it.

(3142) Q. Were the people who created the disturbance at that meeting the same people who created the disturbance at the preceding meeting, as testified ——

A. Generally so, yes, sir.

Q. Can you refer to some of them?

A. Well, Mr. Leone was one of them who was talking across the floor, and Mr. Colombo.

Q. Acchione, you mean?

A. Colombo Acchione, yes, sir, was jumping up, "Let this one have the floor, let that one have the floor," and making motions, and the whole thing was in complete disorder.

Q. When did you resume membership meetings?

A. I think the membership meetings were resumed following the appointment of a bylaw committee and the adoption of bylaws and the establishing under the procedures of those bylaws a meeting of the total area, territorial jurisdiction of the local was divided into areas, and we established a meeting for each area, and when those bylaws were approved by the membership, I think the series of meetings then started to be held in each one of those, and that was the regular resumption of meetings, which I believe in all of the areas except one has been continuous since that time.

Q. Was that established sometime in 1955?

A. Yes, sir, I am quite sure it was somewhere in 1955, (3143) about the middle, probably, or a little after that.

Q. Was that innovation in the method of conducting membership meetings an area type of meeting?

A. To my knowledge, that was the first regular established meetings in areas that had been carried on by the organization.

Q. Of what benefit was that to the membership as compared with the former method of conducting membership meetings?

A. Well, with the local union with the territorial jurisdiction of the size of 542 here, which is the 34 eastern counties and the State of Delaware, the extreme limits of that territory are many, many miles away, and it is difficult for a member to come into a meeting at night and return home and be able to work the next day, and most of the time the things discussed at the meeting in a central location such as this deal principally with the problems in the metropolitan area, very seldom get to the problems of a given outlying area. So in this way it was beneficial to give the men an opportunity to meet among themselves in their own locality and discuss the common problems of that particular area and not be having to travel all that distance, and still be able to go to work the next day. Those are the outstanding benefits.

Q. I show you a document entitled "An Accounting, International Union of Operating Engineers Welfare Fund of (3144) Eastern Pennsylvania and Delaware", and ask that it be marked as Defendants' Exhibit No. 60 and ask you what that is.

(Document entitled "An Accounting, International Union of Operating Engineers Welfare Fund of Eastern Pennsylvania and Delaware" was marked Exhibit D-60 for identification.)

A. This is one of the reports of the board of trustees of the Welfare Fund, covering the period from the amalgamation of the three funds, January 8 up to and including May 31, 1955, which was distributed to all of the members, and I believe the contractors contributing to the fund likewise received it.

Q. That is, it covers the period from January 8, 1953, the date of the creation of the present fund, up until ——

A. —May 31, 1955. That was sent to the membership and I believe to the contractors who contributed to this fund.

Q. And that is a report of the number of claims that had been processed, the receipts and expenditures, and so forth, of the trustees during that period, is it not?

A. It is, sir, yes, sir.

(Booklet entitled "Trustees' Report, International Union of Operating Engineers Welfare Fund of Eastern Pennsylvania and Delaware" was marked Exhibit D-61 for identification.)

(3145) Q. I show you another document which has been marked Exhibit D-61 and ask you what that is, Mr. Wharton.

A. This is another report, May 31, 1956 to November 30, 1956, a similar report to the previous one, showing the income and expenditures.

Q. And that was issued when?

A. Covering this period or thereabouts and was likewise distributed to the membership and the contributing employers.

Q. This is the most recent one, is it not?

A. Yes.

Q. This was distributed in January of 1957?

A. Yes, that's the date it was sent out and the letter covering it from the board of trustees.

Q. This also shows the number of claims that had been processed by the trustees and the total amounts paid?

A. Yes. It is a brief summary of the operations of the fund.

MR. WOLFE: I thought I would not take the time, if Your Honor please, to have these read, but does Your Honor wish to see this one too?

(Exhibit D-61 handed to the Court.)

BY MR. WOLFE:

Q. Mr. Wharton, sometime in February, 1953, Mr. Maloney appointed an interim hearing board, did he not?

(3146) A. Yes, sir.

Q. I show you a letter date February 26, 1953, which I will ask the stenographer to mark as Defendants' Exhibit No. 62, and ask you to identify that.

A. This is a copy of the letter sent to the secretary, Recording Corresponding Secretary, Local 542, designating the appointment, or pointing out the appointment, of the interim hearing board which would hear the complaints of the membership.

Q. Would you read it, please.

A. It is under date of February 26, 1953, addressed to Mr. Otto Weidman, Recording Corresponding Secretary, Local Union 542, 121 North Broad Street, Philadelphia, Pennsylvania.

"Dear Sir and Brother:

"Pursuant to discussion and reports before the General Executive Board at its meeting February 10, 1953, Miami, Florida, in connection with conditions surrounding Local Union #542, an Interim Hearing Board is appointed, consisting of the following members:

"1. Vice President Joseph J. Delaney, Chairman.

"2. Wm. F. Carter

"3. Hunter P. Wharton

"The Board will proceed to hear matters involving (a) economic conditions within the area of (3147) Local Union #542; (b) advisability of issuing additional charter or charters to members within the area; (c) problems connected with creating and adopting approved By-Laws for the government of Local #542; (d) other matters connected with the welfare of the membership in the area, including International Supervision, tenure, etc.

"Any and all interested members are directed to communicate direct with the Chairman of the Interim Board at 111 Eighth Avenue, Room 1567, New York, N. Y., for the time and place to submit requests or be heard and to do so as soon as possible. This Interim Hearing Board is desirous of completing its work as speedily as possible in order to report to the General Executive Board its findings and recommendations.

"Kindly see that this letter is posted on the Bulletin Board of Local #542. Your cooperation is requested.

"Fraternally yours,"

Signed William E. Maloney, General President.

(3148) Q. And, Mr. Wharton, I show you a copy of a letter dated June 11, 1953, which will be marked Exhibit D-63.

(Letter from Joseph J. Delaney to All Members of Local Union 542, dated June 11, 1953, was marked Exhibit D-63 for identification.)

BY MR. WOLFE:

Q. And I ask you to identify that, please.

A. This is a communication on the International stationery, the stationery of Joseph J. Delaney, Fourth Vice-President, with a New York address, and under date of June 11, and addressed to All Members of Local Union 542.

Q. Will you read that, please.

A. "Dear Sir and Brother:

"The Interim Hearing Board appointed by General President Maloney, as provided by the enclosed notice to Local Union 542, has scheduled a series of hearings for the convenience of the members. The hearing schedule is as follows: "Wilkes-Barre, Pennsylvania, June 16, 17, 1953. Hotel Redington. See bulletin board for room number.'

There is a pencil notation here, "East Market Street."

Q. Well, you needn't bother with that. Just read it.

A. "Reading, Pennsylvania, June 18, 19, 1953. Reading (3149) Building Trades Hall, 211 Eighth Street, Room 203 and 204.

"Harrisburg, Pennsylvania, June 22, 23, 1953. Labor Temple, 1219 North Third Street..

"Philadelphia, Pennsylvania, June 24, 25, 26, 1953. Broadwood Hotel. See bulletin board for room number.

"Wilmington, Delaware, June 29, 30, 1953. Carpenters' Hall, 1611 Pennsylvania Avenue.

"The subject matter before the Hearing Board is set forth in paragraph 2 of the enclosed letter. For the convenience of the members desiring to be heard, the Board will be in session on each day from 1 P. M. and remain in session until 5:30 P. M. and each evening beginning at 7:30 P. M. and remain in session until all members present have had an opportunity to be heard.

"Your dues book will serve as your identification.

"Fraternally yours,

"Joseph G. Delaney, Chairman

"Interim Hearing Board."

Q. Was that letter sent to each one of the members of Local 542?

A. As I understand, it was, sir, yes, sir, sent to each (3150) member.

Q. Now, as a member of the Interim Hearing Board you attended those hearings or most of them?

A. Yes, sir. I attended.

* * * * * * * *

Q. Did you attend any of the hearings of the Interim Hearing Board?

A. Yes, sir. I attended, I think, all of it but a short part of some sessions.

Q. And do you have any recollection as to approximately how many members appeared and testified at the various hearings?

A. Well, from being present most of the time I would say it was somewhere close around 500. I wouldn't want to set an exact figure.

(3151) Q. Now, did the Board file any report after these hearings were concluded?

A. Yes, sir. They filed a report with the Executive Board or the general president. I am not positive which it was —for the Executive Board, though.

Q. How many reports were filed by the Board?

A. I think there was a partial report and another more or less final report. I may be wrong on that; but that is my recollection.

Q. I show you what is referred to as Case No. 23 and consisting of three pages, which I will clip together and ask the stenographer to mark as Exhibit No. 64.

(Minutes of the General Executive Board in connection with the Interim Hearing Board's Report, consisting of three pages clipped together referred to as Case No. 23 was marked Exhibit D-64 for identification.)

BY MR. WOLFE:

Q. And I ask you whether this is the copy of the first report of the Interim Hearing Board as it appears in the minutes of the General Executive Board of the International Union.

A. Yes, sir. It appears to be the printed parts of the minutes of the General Executive Board, which is in connection with the Interim Hearing Board's report. It is a (3152) partial report.

Q. Is the first and partial report of the Interim Hearing Board copies in full in that, in those pages?

A. Yes, sir. I would say it is.

* * * * * * * * *

(3153) BY MR. WOLFE:

Q. And I show you, Mr. Wharton, another document which will be marked Exhibit D-65.

(Document entitled, "Case No. 12," minutes of the General Executive Board of the session of January, 1954, copy of the second and final hearing of the Interim Hearing Board, was marked Exhibit D-65 for identification.)

BY MR. WOLFE:

Q. And I ask you whether Case No. 12 referred to in that exhibit as taken from the minutes of the General Executive Board of the session of January, 1954, is a copy of the second and final report of the Interim Hearing Board.

A. Yes, sir. I would say that it is after looking it over.

* * * * * * * * *

(3318) RE-DIRECT EXAMINATION.

BY MR. WOLFE:

Q. Mr. Wharton, Exhibit D-31, which is the orange-covered (3319) booklet containing the contract to which you have referred includes only the contract for the five-county area, but at the back of that booklet, at least in the copy that I have, there is also, is there not, the agreement covering the upstate counties?

A. Yes, sir.

Q. Beginning at page 55?

A. Yes, sir.

Q. And on this question as to the guaranteed work week and the reporting time, Section 4, on page 62 of Exhibit 31 has the same provision, has it not, as it appears? Well, you see the provision at Section 4 on page 62?

A. Yes, sir.

Q. Now, that same provision appears in the other contracts, does it not? They are included in Exhibit D-31?

A. The provision of the two-hour reporting time and what not ——

Q. Yes.

A. —is both—they are all the same; yes, sir.

Q. As a matter of fact, Exhibit D-31 contains more than —how many different contracts are contained in that?

A. Well, there is just ——

Q. Would you just identify them.

A. There is about four of them that was made in this form (3320) so as to avoid the necessity of the member having to carry a half dozen books at one time; so we embodied all of the contracts in the one document.

Q. Well, now, beginning at page 1 of Exhibit D-31 and continuing up to what page is the contract for the five-county area?

A. That winds up on 33, I think.

Q. That is the five-county area?

A. Yes, sir.

Q. And Delaware, isn't it?

A. That is correct. Yes, sir.

Q. Up to what page?

A. Thirty—well, 34, the signature page.

Q. And then beginning on page 37 is the contract for the same period of time, is it not?

A. That is right, sir.

Q. For the counties specified on that page?

A. That is right, sir.

Q. And with the associations also or with the contractors associations also named on that page?

A. Yes, sir, the contractors associations.

Q. And that runs over to what page?

A. That runs to 52.

Q. 52.

(3321) At the beginning of page 55 is the agreement be-

tween Local 542 and the contractors associations referred to on that same page for the counties referred to on that page?

A. Yes, sir. That is correct.

Q. And that runs over to what page?

A. That runs over to the last page, 72.

Q. Now, then there are three contracts in this booklet, are there not?

A. Well, there would be four if you counted Delaware as a separate one. It is the same contract but it is—covers the four areas.

Q. And are the provisions with respect to the reporting pay, and so forth, the same in all three contracts?

* * * * * * * * *

THE WITNESS: I would say yes, sir. The provisions are the same in those contracts.

* * * * * * * * *

(3326) WILLIAM H. THOMAS, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

BY MR. WOLFE:

Q. Mr. Thomas, what is your profession?

(3327) A. Practice of law.

Q. And where are your offices located?

A. Cleveland, Ohio.

Q. Are you associated with a law firm in that city?

A. The firm of Hartshorn, Thomas, Edelman, and Fludine.

Q. You are a member of the bar of what jurisdiction?

A. A member of the bar of Ohio and of the District of Columbia.

Q. I believe your appearance has been entered in this case as one of counsel for the defendants; is that correct?

A. It has.

Q. Are you a member of the International Union of Operating Engineers?

A. I am, Local 18 of Ohio.

Q. When did you become a member of the International Union of Operating Engineers?

A. I believe it was 1928 or 1929.

Q. And you have continuously been a member of Local 18 since that date, have you?

A. That's right, and its predecessor local, I think it was 589, which was later merged into Local 18.

Q. You were also general counsel for the International Union of Operating Engineers, were you not?

A. I was general counsel from 1938 until May 1 of 1956.

(3328) Q. When you retired as general counsel?

A. I retired as general counsel.

Q. Were you consulted from time to time, Mr. Thomas, by Mr. Maloney with respect to various developments relating to Underwood and the affairs of Local 542?

A. I was.

Q. Were you present in Judge Grim's court in August of 1952 with respect to the case that was docketed as No. 14071?

A. Mr. Maloney and I appeared there on the morning of August 14 of 1952.

Q. And in what capacity did you appear in that case?

A. I appeared as general counsel for the International Union of Operating Engineers and representing Mr. William E. Maloney.

Q. Did you have anyone associated with you in that capacity as counsel?

A. Mr. Brewster Rhoads, Philadelphia attorney, and Robert Trescher.

Q. Did you participate in the conferences or hearings before Judge Grim of that case?

A. Well, the hearings took place on the 14th and the 15th. I was present at those hearings, but we did very (3329) little participating.

Q. What activities with respect to the trial or conferences relating to the issues in that case did you and Mr. Rhoads take part in?

A. As I recall it, there were no issues in that case that came up during the negotiations. The negotiations were confined exclusively to an attempt to cure the differences between the contractors associations and the Local Union 542.

Q. Did you or Mr. Rhoads participate in those negotiations?

A. Not directly in the negotiations between the associations and 542. Those were handled by Mr. Freedman and Mr. Jacoby.

Q. Are you familiar with the circumstances under which the demand for retroactive pay to May 1, 1951, was withdrawn as one of the union demands?

A. I am.

Q. Will you tell us what occurred?

A. It was on the evening of the 14th in Judge Grim's chambers that Mr. Freedman withdrew the demand for retroactive pay. The next morning when the sessions resumed that question came up and Mr. Freedman had changed (3330) his position, stating that he did not believe he had withdrawn the demand for retroactive pay. Something further occurred, and he said he would leave it to anybody in the room, and he thought that Mr. Brewster Rhoads would be able to answer that question.

Brewster Rhoads then explained to the Court that it was his distinct impression that Mr. Freedman had withdrawn the claim for retroactive pay the night before.

Mr. Freedman then said, "I think I have stuck my neck out and got my head cut off." That was the expression he used at that time.

Q. Did you attend the hearing in Washington on August 26 upon the opportunity given Local 542 to show cause why supervision should not be continued?

A. I did.

Q. Will you tell us what occurred at that meeting.

A. That hearing was in charge of William E. Carter as the hearing officer. It was set, I think, for two o'clock in the afternoon, but due to some train delay, the parties didn't get there for about an hour, and finally a group came in from Local 542—Mr. Underwood, Mr. Dawson, Mr. Concordia, Mr. Russell, several others. (3331) Pantaleo. I can't recall all of them now.

The meeting was opened with Mr. Carter reading the authority that he had received from General President Maloney creating him as the hearing officer, and after he read that he asked Mr. Underwood and the group what they had to say as to why supervision should not be continued.

General discussion followed, in which Mr. Underwood said he couldn't understand why supervision had been imposed or why it should be continued, because the reason for invoking supervision had been lifted. In other words, he took the position that supervision had been imposed because a strike had existed, and that inasmuch as the strike was off, therefore, no reason existed for the continuance of supervision.

Mr. Carter spoke to him about the fact that the order of supervision wasn't based on the extent of the strike, but included a number of other things.

Mr. Dawson then suggested that the order of supervision be read, and I think Carter asked him to read it and he read it.

Then followed a discussion of what was going on in negotiations in Chicago, Mr. Underwood stating that (3332) nothing had been settled in Chicago.

Mr. Carter then explained to the men his view of what had taken place in Chicago, and that all things in the independent contract had been agreed to, with the exception

of three or four minor items, and that these were to be argued out or negotiated out when they came back into Philadelphia.

The question then of the assistance of the maritime group came up. That was some information that Mr. Carter seemed very anxious to get, as he said, "I think it is a very unusual situation for a strike to run for three months and to claim that all of the engineers are out of work, but still six or seven thousand of the building construction tradesmen out on the street and at the same time no pickets or very few pickets on the jobs by the engineers that were declaring the strike, but by a union that was not affiliated with the Building and Construction Trades Department. That was the maritime group."

He wanted to find out how it was financed, and I think at about that point Mr. Underwood said, "I am not going to talk any more unless we have a recorder or we have a record taken."

(3333) We explained to him that there were plenty of tablets and pencils on the table to keep notes if he wanted to, but in the colloquy that followed there was a general resistance on the part of everybody to give any reasons why supervision should not be continued; and Mr. Carter spoke about the International agreements that had been dishonored in this area that might have caused the invocation of supervision, and one or two of them said that they weren't going to honor International agreements unless the orders came through Roy Underwood.

There were several other things spoken of at that particular meeting that had to do with the condition of affairs in Philadelphia, and following that the meeting closed. That was the end. I would imagine it lasted about an hour and a half or two hours.

Q. Now, at the time of that hearing on August 26 no written appeal had as yet been filed from the order of supervision, had it?

A. My recollection is the appeal from the order of supervision wasn't filed until September 13 following.

Q. What are the remedies under the constitution of the International Union of Operating Engineers for review of such an order, an order of supervision?

(3334) A. The remedies under the constitution from the order invoking supervision by a general president are an appeal to the General Executive Board.

Q. Now, the appeal itself, you said, was filed some time in September of 1952.

A. That's my recollection.

Q. And a date for a hearing in that appeal was fixed for the following February in Miami, was it not?

A. I forget the exact date in Miami, but it was the next meeting of the General Executive Board, which was held in Miami.

Q. The letter which has already been offered in evidence in this case was written by Mr. Freedman, to which you filed a reply, concerning the location of the hearing, and so forth; is that correct?

A. That's correct.

Q. The letter of January 23, 1953, which has been marked Exhibit D-16, addressed to the International Union of Operating Engineers, was replied to by you, was it not, by the letter dated January 30, 1953, which has been marked Exhibit D-17?

A. That's correct.

Q. Now, were you present at the session of the General (3335) Executive Board in Miami in 1953, at which the hearing upon this appeal was scheduled to be heard?

A. I attended that meeting.

Q. Did anyone appear at that hearing to proceed with the processing of the appeal?

A. No one that we were able to find.

Q. Was the case called, the appeal called, as a case before the General Executive Board?

A. The case was called and continued as a pending matter, I believe because of Mr. Freedman's letter, and arrangements made later on to have an Interim Hearing

Board go up into Pennsylvania and hear what the members had to say.

Q. And has that appeal been continued since then as a pending appeal upon the minutes of the General Executive Board?

A. I think that appeal has been noted in every one of the meetings of the General Executive Board from January of 1953 down to our convention in 1956, and the appeal has been discussed and marked as a continued matter.

Q. Were you present at the Quadrennial Convention of the International Union in Chicago last spring?

(3336) A. I was.

Q. That was in April, was it, of 1956?

A. April of 1956.

Q. And was Mr. Underwood there?

A. He was.

Q. Did you see any other of Mr. Underwood's associates there?

A. Mr. Dawson and Mr. Acchione.

Q. And did any of them make any effort to process on the floor of the convention the appeal to which we referred?

A. They did not.

(3337) Q. Is there any other remedy under the constitution of the International Union with respect to supervision, locals under supervision, such as a right to referendum vote?

A. There is a particular section of the constitution, I think, providing that when 25 per cent of the members of any local union that are then under supervision desire to have it lifted and will present a referendum to that effect to the general president or a petition to that effect to the general president, that a referendum shall be held on the subject, similar to it.

Q. I show you Exhibit D-3, which is a copy of the constitution of the International Union and call your attention to Article XVII, Section 1(a) on page 65, and ask you whether that is the provision to which you have referred.

A. It is the second paragraph of 1(a).

Q. And will you read that, please.

A. "Requests to modify, continue, amend, withdraw or invoke International Supervision, together with official actions or inaction thereon shall constitute appealable matters and be processed in the manner and form regulating appeals under the Constitution. Any such request when signed by not less than 25 per cent of the members in good standing of a Local Union shall (3338) cause a referendum on the subject to be submitted to the membership by the General President, who shall be guided by the results thereof in his decision on the question involved therein."

Q. Was any petition such as is referred to in that section filed by Mr. Underwood or any of his associates?

A. No.

Q. Is it a fact, then, Mr. Thomas, that none of the constitutional remedies for appeal from the order and review thereof were followed except the initial step of filing in September, 1952, the written appeal?

A. That is correct.

Q. Did you also attend, Mr. Thomas, the hearing before the General Executive Board on the charges against Mr. Underwood as held in New York on September 17, 1952?

A. I did.

Q. Will you tell us what occurred at that hearing.

A. At that hearing of the General Executive Board the first case that was scheduled was the matter of the charges against Roy Underwood. The General Executive Board was called into session, and immediately President Maloney turned over the Chair to Mr. Delaney and stepped out of the position on the Board.

Mr. Delaney then read the charges against (3339) Underwood that had been filed against him by Carter, and when he got through he asked Mr. Underwood if he was ready to proceed.

Mr. Underwood said that he was and that he had his answer and wished to file it. He presented about 20 copies

of his answer, which were in multigraphed form and consisted of about 10 to 20 sheets each. Those were distributed to the members of the Executive Board, following which the hearing proceeded.

Mr. Delaney then called upon me to identify certain documents. I identified and read the order requesting Underwood to call off the strike. That was the order of August 11 or 12, as I recall. I next read the lawsuit which had been filed by Underwood in the federal court. That was 14071.

Q. That was the case before Judge Grim?

A. Before Judge Grim.

The third thing I read was a bill that we had received from Brewster Rhoads in the sum of $3500 for the appearances before Judge Grim and in the negotiations.

The fourth thing that I read was the matter of newspaper articles that had come out relative to the filing of the suit against Maloney by Underwood. When I concluded the identification of those documents, that was (3340) all that I did before that meeting.

Mr. Maloney then spoke to the meeting and testified that what Underwood had said about him in the lawsuit was untrue, that he had not defrauded the men and that he had not entered into any conspiracy with McGrath or Halloran.

Following that they called upon Mr. Underwood. Mr. Underwood then read this lengthy answer that he had filed previously, and after that a number of his members spoke. They told about a wonderful record that Mr. Underwood had made as the president of the local union; talked about the progress that the local union had made in the past few years under Underwood; how well it was being administered; how the finances had increased; but they said nothing, as I recall, on the charges.

Mr. Carter then answered some of the things that were said there, particularly with reference to what Underwood had said about Chicago. Carter spoke about the fact that these details of the independent contract had been accepted in Chicago—that is, the major portion of them, with the

exception of three or four minor items—and at the conclusion of that Mr. Delaney wanted to know if there was anybody else who wanted to be heard from. There was no one else that wanted to be heard from.

(3341) Mr. Lentino—or, Mr. Leone did make a remark at that time, and that is he wanted to know why Roy Underwood should be blamed for what the attorney had done in this case. He said, "All of these things about McGrath, all of these things about conspiracy, are put in there by the lawyer; Roy Underwood had nothing to do with that and we don't think we should be blamed for that situation."

Now, at the conclusion of that hearing, when no one else cared to go forward, Mr. Delaney asked Underwood if he had had a fair trial, if there was anything else that he wanted to be heard on, whether or not he cared to continue the case or produce further evidence. He said nothing on that situation.

I forgot to remark that at the opening of that case Mr. Underwood did ask if he could have his counsel present at that hearing. Mr. Delaney asked him who his counsel was, and he told him Mr. Freedman.

He said, "Is Mr. Freedman a member of this organization?"

Mr. Underwood said, "No."

Mr. Delaney said, "Roy, you know the rules and customs of this organization as well as I do. You can have anybody as your counsel in this organization, who is a member of the organization." That was the end of that (3342) particular appeal for the counsel.

But that, in brief, was what took place at that meeting.

Q. Did Mr. Delaney ask him whether he felt he had a full and fair trial?

A. He did.

Q. Did he make any reply to that?

A. He said he had.

Q. Did Mr. Underwood ever file any requests to the Gen-

eral Executive Board to review the order which had been entered by the Board against him on those charges?

A. Other than his answer that was filed at the time of the hearing, I know of nothing that has been filed. He was notified afterwards by the General Secretary-Treasurer as to whether he desired to have a re-hearing on the matter, but he never responded to that.

Q. And at the convention in last April, April, 1956, at Chicago, did Mr. Underwood make any effort to process on the floor of the convention any appeal or request for review of the decision of the General Executive Board against him?

A. Not directly or indirectly that I know of.

Q. Mr. Thomas, is there any use of the term in the International constitution "autonomy" with respect to the rights and powers of local unions?

(3343) A. May I have that question repeated? I don't know if I quite understand it.

THE COURT: Read it back, Mr. Bosta.

(Last question read.)

THE WITNESS: Not that I recall offhand.

BY MR. WOLFE:

Q. What is the obligation under the constitution of local unions and their officials to comply with directives of the General President of the International Union?

MR. FREEDMAN: If the Court please, I object. The constitution speaks for itself, sir.

THE COURT: Well, I will hear opinion evidence on that. My opinion might disagree with him, but I will hear it, anyway.

Read the question back, Mr. Bosta.

(Last question read.)

THE WITNESS: I would like to refer in answer to that question to Article XXIII, Subdivision 3 on page 90 of the constitution entitled "Duties of Members."

BY MR. WOLFE:

Q. Will you read it, please.

A. "Members of Local Unions shall conform to and abide by the Constitution, Laws, Rules, Obligation and Ritual, and the decisions, rulings, orders and directions (3344) of any authority of the International Union empowered by this Constitution to make them. Each member shall keep the Recording-Corresponding Secretary properly and promptly notified of his residence and any change thereof. Each member shall hire none but those in good standing with a Union having jurisdiction over the work to be done nor purchase commodities without the union label thereon when otherwise possible. Members may upon proper credentials being produced obtain admission to meetings of other Local Unions of the organization.

"The admission to membership in conformity to the Constitution, Obligation and Ritual constitute a contract between the member, his Local Union, the International Union and every other member therein, whereby, in consideration of the benefits bestowed by such membership, he agrees that he will remain a member until expelled; that he will not violate the Constitution, Laws, Rules, Obligation and Ritual, and the decisions, rulings, orders and directions of the International Union or its subordinate branches, nor the trade rules of the locality in which he works: that he will not enter into the employment of any person conditioned on severing his membership with (3345) this organization; that upon the termination of his membership he will acknowledge his Obligation to be still binding upon him and refrain from doing any act or deed in violation of

the principles, Constitution, Laws, Obligation, Ritual and policies of this Organization, and the decisions, rulings, orders and directions of any authority of the International Union empowered by this Constitution to make them."

Q. What provisions of the constitution give the General President the authority which is exercised by him in this case?

A. I would say, first, that it appears in the ritual, and the ritual by specific reference is made a part of this constitution. That is the first thing.

Secondly, Article VI of the constitution provides in general that the General President shall have supervision over all local unions.

Q. Specifically which section of Article VI is that?

A. In Article VI?

Q. Is it Section 3 on page 21?

A. Article VI, Section 3, which provides:

"He shall have power to direct and supervise all Local Unions, Local Officers and any other sub- (3346) division of the International Union and members."

Q. What does the rest of that section provide, Mr. Thomas?

A. The rest of Article VI, Section 3, provides as follows:

"Whenever in his opinion the best interests of the organization require it, or Local Unions, Local Officers and any other subdivision of the International Union or members shall be deemed by him to be incompetent, negligent, or to have failed in carrying out their respective duties, or to have violated the Ritual, Obligation, laws, rules or decisions of the organization or its duly constituted authorities, he shall have full power to suspend or remove such individual members, suspend or remove such Local officers, suspend or revoke charters of such Local Unions or place such Local Unions and their officers and members under International supervision. He shall have power to designate and appoint persons to fill the places of those Local Officers of Local Unions suspended, removed or placed

under International supervision, which appointees shall conduct the affairs over which they have been appointed for such time and in such manner as he may direct. All of the business, finances, affairs and government of any Local Union (3347) whose charter shall have been suspended by the General President or shall have been placed under International supervision by him, shall be fully and completely conducted and administered by the General President or his deputy thereunto appointed with full power of control therein and thereover. During such suspension or International supervision all rights and powers of the Local Union to conduct its own affairs shall be suspended. He shall countersign all vouchers and checks for payment of monies or for withdrawing funds from the bank. He shall have power to appoint Local Officers pro tem and all committees not otherwise provided for, to deputize any member in good standing to perform any of the powers and duties of his office."

Q. Is there any provision of the constitution, Mr. Thomas, which permits an official of a local union to condition his observance of an order by the General President upon the local officers' approval of the reasons which led the General President to issue the directive?

A. I know no exception in the constitution or ritual that would permit that to be done.

MR. WOLFE: Cross-examine.

THE COURT: Well, I understand that the ritual (3348) is something separate and apart from the constitution.

THE WITNESS: The ritual by specific Article, Your Honor, in answer to that—and I quote now from Article I, Section 4 ——

"The Ritual and Obligation shall form a part of this Constitution and shall be administered in such form, and from time to time revised in such manner, as the General Presi-

dent, with the approval of the General Executive Board, may direct."

MR. WOLFE: The ritual itself is Exhibit D-4.

* * * * * * * * * *

(3353) MR. WOLFE: If Your Honor please, there were just two or three matters that I neglected to cover in my direct examination of Mr. Thomas yesterday. May I reopen it for that purpose?

THE COURT: You may.

WILLIAM H. THOMAS, resumed.

DIRECT EXAMINATION (continued).

BY MR. WOLFE:

Q. Mr. Thomas, I show you a photostatic copy of a five-page document entitled "Report", signed by William E. Carter, addressed to the General President of the International Union of Operating Engineers, which I shall ask Mr. Schuman to mark as Defendants' Exhibit No. 68, and ask you whether that is a copy of the report filed by Mr. Carter of the hearing which he conducted on August 28, 1952, in Washington.

* * * * * * * * * *

(3354) THE COURT: The objection is overruled.

A. This is directed to the General President of the International Union of Operating Engineers.

(3355) "In re: Local Union 542, International Union of Operating Engineers, Philadelphia, Pa.

"Dear Sir and Brother:

"Pursuant to the order of General President William E. Maloney, copy of which is herewith attached and is self-explanatory, I desire to submit report as his Deputy and Hearing Officer regarding Local Union 542 and the appearance of certain members thereof, in response to a notice to show cause contained in the General President's order of Supervision dated August 19th, 1952.

"The hearing was set for 1:00 p. m. at the General Office, 1003 K Street, N. W., Washington, D. C. on August 26th, 1952. Due to a delay in train service, the parties did not arrive until 2:00 p. m. The following members were present representing Local Union 542:

"Roy J. Underwood, President and Business Manager

"Henry Lavery, Business Agent

"Girard Leone, Business Agent

"Homer Dawson, Business Agent

"Vernon Brightbill, Business Agent

"A. L. Smith, Business Agent

"Peter Pantelez, Business Agent

"Columbo Acchione, Member of the Executive Board and Trustee

(3356) "James Russell, Master Mechanic of Freyn Company

"Michael Concordia refused to state who he worked for.

"The meeting got under way with the reading of the General President's letter to me, William E. Carter, as Hearing Officer, following which the Delegation were asked to present its reasons in connection with the matter on hearing.

"Brother Underwood acted as spokesman for the group and advised that all present were bewildered as to why the order of August 19th had been issued, and that there was no basis for the allegations contained in the order. That all allegations were denied and that all things which had been done by himself had been in accord with the Constitution

and that at the time supervision was invoked, he was simply acting as the Agent of Local Union 542.

"Brother Dawson suggested that the letter of supervision be read and that a discussion take place point by point.

"Brother Underwood read the letter of supervision and stated that the primary reason for ordering supervision no longer exists and did not exist at the time the order was issued. He stated the strike no longer existed and he admitted that action had been taken by the (3357) Philadelphia Building Trades Council as referred to in the General President's order.

"He stated that he took issue with the General President as to the proceedings held in Chicago, and further stated that nothing had been agreed upon there by him. Upon the subject of loss of good will, Brother Underwood stated that this was an unknown substance and that it was impossible for him to put his finger on any instance of same. Therefore, he did not know about it.

"He admitted that Governor Fine had asked for intervention by the International Union. He denied that any dissension existed on a rampant basis. He further denied that any members were seeking to withdraw or set up a separate charter or that supervision had been asked for and insisted that supervision was illegally imposed and that the orders of the General President were illegal and that in all instances he was bound to follow the membership, when the membership took issue with the top authority in the International Union.

"On the subject of picketing during the recent strike Brother Underwood admitted that pickets had been secured from members in the Maritime Trades Council, but refused to tell how many pickets had been secured. He admitted that he had signed two checks for an undetermined (3358) amount, payable to the President of the Maritime Trades Council for picketing expenses.

"On being asked whether the checks were for more or less than one thousand dollars, he refused to answer. He

also said that the Maritime pickets took divided authority from himself and from the Maritime Council officers. He reiterated that the General President's order of August 11th and of August 19th were both illegal and related about calling a meeting of his Executive Board on the morning of August 12th to resist the authority of the International Union and the General President.

"He related that Mr. Friedman, Attorney for Local Union 542 was present and read the bill of complaint, but upon questioning, none of the other members present at the hearing could recall having heard the bill read.

"Brother Underwood said he felt a lawsuit was necessary to resist the General President and that he gave the facts to Mr. Friedman, upon which the suit was based and that after the suit was drawn up, he, Brother Underwood, read it thoroughly and signed it. He said the allegations regarding conspiracy and violation of the Sherman Acts and the Clayton Acts and the linking of the contractors and J. Howard McGrath to the lawsuit was the attorney's idea based upon the facts which Underwood had (3359) given to the attorneys.

"When asked whether the charges of the lawsuit were in his opinion, commendable or creditable to the International or to the International Officers he wanted to know what 'creditable' meant, but finally stated that the lawsuit as filed was something creditable in that it was necessary to prevent the International and the General President from imposing his will upon the Local Union.

"At this point, Brother Underwood declined to answer any questions unless a record was made of such questions and answers thereto and although provisions were made to provide ample tablets and pencils, he stated he did not want any and did not want to make notes.

"He was then asked the question as to whether an assessment had been placed upon the members of Local Union 542 with the approval of the General President, or the International Union. Brother Underwood refused to answer the question.

"He was then asked whether an assessment had been collected from permit men working within his district. He again refused to answer.

"He was asked whether he had information regarding resistance to following advice and instructions issued out of the General President's office by Brother Hill (3360) or Brother Wharton. He again refused to answer the question.

"He also advised the other members present that they did not have to answer any questions they did not desire to.

"At this point, Brother Brightbill said that to his knowledge no orders had been issued to disregard Brother Hill or Brother Wharton's authority.

"Brother Smith testified to the same effect.

"Brother Pantalea said yes there was some talk between him and the employer on the Morrisville job regarding the General President's authority issued through Hill or Wharton, but that he, Pantalea, had said no orders would be honored except such as came through his Business Manager.

"The question was then asked whether the members of the Committee present knew what was in the bill of particulars of the lawsuit and if they had heard it read. Brother Girard Leone said he did not recall as having heard it read. Brother James Russell refused to answer the questions and no answer came from the remaining members present.

"Brother Girard Leone at this point said he would recommend that the order of supervision be lifted and he thought he spoke the mind of nearly everyone present on the grounds that Attorney Friedman had misled the members (3361) of Local Union 542 and that the lawsuit was a mistake and that supervision should not be imposed because a lawsuit had been filed through an attorney's act.

"He further stated that what he saw of the attorneys in the Judge's Chambers at Philadelphia convinced him that the way they acted they were a disgrace to the profession.

"At this point Brother Underwood joined in the conversation by accusing the International and the contractors of linking up together to beat down the men as shown by the conference in the Judge's Chambers in Philadelphia and stated that the International aligned itself with the contractors' attorneys in the Judge's Chambers to defraud the legitimate objectives of the Local Union.

"This about concluded the testimony of the members present at the hearing and it was asked a number of times if any of those present desired to offer any other testimony of any nature in reference to the case in question and no answer was given by any of the Committee to this question. Therefore, the meeting was adjourned at 3:30 p. m.

"As the presiding officer at the hearing I have come to the following conclusion regarding this case:

"It is apparent from listening to Brother (3362) Underwood and observing the silence which took place most of the time on the part of the other members of his Committee that he (Brother Underwood) is dominating the picture and insisting that it was right for him to file any kind of a lawsuit against the International Union regardless of how bad the charges were contained therein and that he presents a picture of one who would do the same thing over again without any remorse. No excuse or apology was offered for resisting the International Union in trying to get this strike settled on August 11th. Only complete resistance to authority is observable in all of Underwood's statements and his general attitude during the hearing of refusing to answer questions.

"There was nothing presented on the part of Local Union 542 which in any way justified a lifting of supervision of the Local Union at this time.

"An important matter which I desire to bring to the attention of the General Executive Board has to do with the filing of a very serious lawsuit by Brother Roy J. Underwood and his attorney against the International, its General President and General Officers.

"Charges in lawsuit alleged misconduct on the part of the General Officers, alleged improper and illegal conspiracy with third persons, alleged improper relations (3363) between J. Howard McGrath and the General President, alleged violation of the Clayton and Sherman Acts through a conspiracy by the General President to defraud the members.

"The lawsuit presents an outstanding example of a document which defames our General Officers. Here was a triple violation of the Constitution of our International Union by Brother Underwood, who as President and Business Manager of Local Union 542 was supposed to know the rules of the organization, and these violations were:

"1. The deliberate defying of the Constitutional authority of the General President.

"2. Circumventing the Constitution by filing a lawsuit when no complaint or charge had been filed within the International Union.

"3. Using the lawsuit as a means to charge the General President and his fellow officers with the most reprehensible, derogatory and illegal conduct and then when full publicity had been attained in the lawsuit, to dismiss it with prejudice showing the utter baselessness of the allegations.

"I charge that Brother Roy Underwood, in assisting in the preparation of this lawsuit, in verifying and filing it in the court and thereby causing it to become public property with notices in the newspapers, has published (3364) literature of a defamatory nature against our General Officers contrary to the provisions of Article XVI, Section 1, of the Constitution of the International Union of Operating Engineers and that this is a matter which concerns every single member of our organization and is so serious as to deserve the attention of the General Executive Board of the International Union.

"It is apparent that Brother Underwood was unwilling to make full disclosure at the hearing. I feel that on the question of irregular procedures by Local Union 542, full

and free information should have been willingly given by Brother Underwood and his Committee, but the same was withheld. The refusal to explain fully about hiring outside pickets with the funds of Local Union 542; refusal to tell upon what basis the pickets were working or were paid; the refusal to give the amounts paid for pickets, since it involved only two checks written by Brother Underwood; the refusal to advise about the assessment placed against the members or about whether the By-laws had been regularly amended providing such assessments with the General President's approval; the refusal to tell about collecting assessments from permit men, etc.

"These are but a few of the facts which were hidden behind the silence of Brother Underwood and which, (3365) coupled with his attitude on the question of defiance against the General President's order of August 11th as well as his policy of declaring strikes in 1950 and 1952 without the approval of the General President. That the attitude of Underwood and his officers in the preparing and filing this type of lawsuit before Judge Grim, involving as it did the reprehensible charges against the General Officers, all fairly well typify the independence which Brother Underwood and his officers have assumed for themselves and Local Union 542 of the International Union of Operating Engineers. It is apparent to me, Brother Underwood considers the International Union to be incidental and subservient to Local Union 542 and that under no circumstances will he follow the advice, ruling or request of the General President or the General Executive Board when it runs counter to his intentions.

"It is apparent that he believes that affiliation with the Building and Construction Trades Council of Philadelphia or the Building and Construction Trades Department of the American Federation of Labor or the American Federation of Labor itself, are merely secondary bodies to be brushed off or resigned from as he decides at the moment.

"He shows callous indifference to constitu- (3366) tional

responsibilities, which is further borne out by his present attitude in that after filing his derogatory lawsuit against the General President and the General Officers and then later, after a court hearing thereon, he dismissed the lawsuit with prejudice, he still made no move to apologize or ask pardon of those whom he had so freely defamed and insulted. This was brought to his attention during the hearing before me, but he absolutely refused to say anything on the subject or to express any sorrow for his act.

"As the presiding hearing officer of these proceedings in observing his manner and what he said and what he refused to say, it appears to me that he is one who has made up his mind not to go along with the International Union but intends operating a Local Union independent of any influence of the International Union or its General Officers or of the American Federation of Labor. I have come to this conclusion not from any one particular thing he may have said, but from his general attitude during the hearing.

"Respectfully submitted,
"William E. Carter,
"Hearing Officer."

(3367) BY MR. WOLFE:

Q. Mr. Thomas, you were present in court when Mr. Underwood testified earlier in the trial with respect to the trial before the Executive Board of certain members of Local 542?

A. I was.

Q. Do you recall his testimony on that subject?

A. I do.

Q. And in connection with that, he testified that vice-president McDonald had authorized the trial of these members before the Executive Board instead of following the procedure for trial set forth in the constitution. Is there any power or authority in the constitution vested in the vice-president to direct a different method for the trial of

members of the local than the method set forth in the International Constitution?,

A. I don't believe there is any power any place in the constitution which takes away the right of a member to be tried by his local union, and the attempt to try members in an Executive Board is illegal and has been held so time and time again. There is no power by a vice-president to give such an order.

MR. WOLFE: I have no further questions.

MR. FREEDMAN: No questions.

* * * * * * *

(3370) JAMES L. McDEVITT, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

BY MR. WOLFE:

Q. Mr. McDevitt, are you present in court today pursuant to subpoena issued by us to you?

A. That is correct.

Q. What is your occupation?

A. I am now serving as National Director of the Committee on Political Education of the American Federation of Labor and the Congress of Industrial Organizations.

Q. Are you a member of any local union?

A. I hold membership in Local No. 8 of the Operative Plasterers and Cement Masons International Union.

Q. Is that a Philadelphia local?

A. Yes; it is.

Q. When did you become a member of that organization?

A. I had been identified with it since 1916 when I started my apprenticeship.

Q. Have you had any connection with the Building and Construction Trades Council of Philadelphia?

(3371) A. Yes; I do.

Q. When did you first have any connection with that organization?

A. When I was first elected business agent in the year of 1925.

Q. And what positions have you held with the Building and Construction Trades Council of Philadelphia during the intervening years?

A. I served as its president and now in the position of business manager.

Q. You are still business manager of the Building and Construction Trades Council of Philadelphia?

A. That is correct.

Q. And you have told us about your office with the Committee on Political Education.

Now, have you any other offices with respect to the labor movement, any aspect of the labor movement?

A. Well, I am now honorary president of the Pennsylvania Federation of Labor, having served as its president for 17 years.

Q. Mr. McDevitt, what were the conditions in Philadelphia which led to the organization of the Building and Construction Trades Council of Philadelphia?

A. Are you referring back to the early 1930's?

(3372) Q. When it was reorganized.

A. Yes.

Q. Well, the conditions were very bad here. There was an unfortunate situation where the Council itself found itself split in three parts. There were three separate and distinct groups. They were not combined, and as a result of that we had a series of jurisdictional difficulties in those days and didn't seem to be able to reconcile them, and it caused a great deal of inconvenience here to the member-

ship of our organizations and also caused us difficulty in getting contracts with employers because we couldn't guarantee them continuance of their jobs and an avoidance of jurisdictional strikes.

Q. And what was done to remedy that situation?

A. The national president of the Building Trades Department came into Philadelphia and held a series of conferences with all of the building trade unions of this city, and as a result of those discussions they chartered a new Building and Construction Trades Council of Philadelphia and vicinity.

Q. Did the erection of the Lincoln-Liberty Building in 1933 have anything to do with that? Did that precipitate the action which was taken just referred to?

A. I would say it was one of the larger operations that had its effect.

(3373) Q. What was that condition?

A. Well, that was one of the worst. During the course of that building—that is, during its construction—I think my memory is right—there was something like 27 or 28 work stoppages.

Q. By different ——

A. Different crafts.

Q. —crafts of the building and construction trades?

A. That is right.

Q. All the different crafts?

A. That is right.

Q. Now, how was that remedied by the reorganization of the Building and Construction Trades Council?

A. Well, there were a new set of rules adopted whereby all of the local unions agreed that there would be under no circumstances any stoppages of work during the lifetime of any given agreement, and if there were any disputes arose with respect to jurisdiction, the person having the trade, rather, having control of the work in question would continue to hold it until such time as the department made a decision at the Washington level.

Q. Mr. McDevitt, I show you a telegram dated May 7, 1951, which has been offered in evidence in this case and marked Exhibit P-196 and ask you whether you will—in the first (3374) place, whether you are familiar with that telegram. Do you recall it, or, if not, will you read it, please.

A. I recall very distinctly the receipt of that telegram.

Q. Will you excuse me just a moment while I show it to Mr. Freedman.

So that the record will indicate what the situation is as to which I want to ask you a few questions, would you read that telegram aloud, please.

A. Addressed to the Building and Construction Trades Council of Philadelphia and vicinity.

"Notwithstanding the propriety of the requests of organized labor, you have; over a number of years, so consistently opposed organized labor and so consistently supported employers that we feel required to sever our connections with your Council so long as you retain your present officers, with regards to the dispute of the International Union of Operating Engineers, Local 542, 542a-A and 542-B with the various associations of contractors representing employers. We feel that economically we cannot engage you and the contractors who are obviously aligned with you, in a trial of the issues in the local press in an attempt to publicly improperly influence the disposition of a matter which is pending (3375) before our local court.

"Roy J. Underwood
"President and Business Manager."

Q. And that was dated—did I mention the date?

A. May 7, 1951.

Q. At the time of that telegram, of the receipt of that telegram, there was in progress the 1951 strike of Local 542, was there not?

A. Would you mind repeating that?

MR. WOLFE: Would you read it, Mr. Stenographer, please.

(Last question read.)

THE WITNESS: That is correct.

BY MR. WOLFE:

Q. Now, the telegram says that the Building and Construction Trades Council of Philadelphia and its officers had consistently opposed organized labor. Has the Council ever opposed organized labor?

A. Sir, there isn't a person identified with the construction industry in this area, particularly the trade unionists, that would agree with Mr. Underwood's statement. I am wondering, if that were true, why it is that the building trade unions of Philadelphia had the strength they have (3376) now in collectiving bargaining.

* * * * * * * * *

BY MR. WOLFE:

Q. Will you proceed with your answer, Mr. McDevitt.

THE COURT: Well, I think he finished his answer at that point. I think he was waiting for a question.

Read the answer back and see if he hasn't finished it.

(Last answer read as follows:

"A. Sir, there isn't a person identified with the construction industry in this area, particularly the trade unionists, that would agree with Mr. Underwood's statement. I am wondering, if that were true, why it is that the building trade unions of Philadelphia had the strength they have now in collective bargaining.")

THE WITNESS: That is correct.

BY MR. WOLFE:

Q. How many building and construction trade unions were (3377) affiliated with the Council in 1951; do you recall?

A. Oh, I may be a little off on this number, but I would guess, taking the separate unions, local unions into account would approximate 85 to 90 separate unions.

Q. And that covered the whole range of the building and construction crafts in Philadelphia?

A. Every phase of construction.

Q. Now, the telegram also says in effect that Building and Construction Trades Council and its then officials had consistently supported the employers in conflict with the interests of organized labor. What are the facts with respect to that statement?

A. Well, I don't believe I have ever heard a more ridiculous statement made by anyone.

Q. What are the facts with respect to the efforts of the Building and Construction Trades Council of Philadelphia to develop master contracts with the contractors and what effect did that have on the members of the union?

A. I think that can be best described by referring to the increase in membership in the engineers union itself since the date of reorganization up to and including the time that Mr. Underwood assumed office.

Q. Do you have any idea yourself as to that increase, the figures representing that increase?

(3378) A. I don't, but it is a tremendous increase, and I am sure that anyone identified with the engineers union in this area can certify to what I am going to say.

* * * * * * * * *

(3379) BY MR. WOLFE:

Q. I am sorry. I didn't get the last clause, the last phrase of your answer.

A. What I was going to add to that was what I believe will be the answer to your complete inquiry.

Q. Yes.

A. As a result in the change of conditions in Philadelphia where we were able to sit down with the builders—that is the Builders Association on Commercial Construction—where our people were able to sit down with these heavy and highway construction groups, and with all persons, all employing groups in the construction industry and work out satisfactory agreements, to me it seems tends to prove our point that we did faithfully represent the best interests of the workingmen in the construction industry here in the Philadelphia area.

Q. What was the purpose of the negotiation of the master contracts, Mr. McDevitt, the Council negotiated with contractors?

(3380) A. First of all, in order to have an effective working agreement in the construction industry it is necessary that the Council itself enter into an agreement with the general building contractors, if possible, because they are the controlling factors on the employers' side. After that is done the respective affiliated local unions representing the different crafts go into negotiations with their employers; but in order to give effect and to protect the agreements with the crafts and their employers, it is necessary to have the over-all agreement with the general contractor.

(3381) Q. I show you a telegram dated May 7, 1952, which has been marked in evidence in this case as Plaintiffs' Exhibit No. 173, and ask you whether you are familiar with it.

Will you read that, so that the record will indicate the subject of the next few questions. Will you read it out loud, please.

A. Yes, I will.

May 7, 1951, addressed to Roy J. Underwood, 121 North Broad Street, Philadelphia.

"Am informed Philadelphia Building Trades Council has

ordered you to return your men to work on jobs where you have no contract. Section 20 o the Constitution and By-Laws to Govern Local Councils of the Building and Construction Trades Department provides that the Executive Board shall consist of one delegate from each affiliated trade and the president and secretary who shall officiate at such and shall be entitled to a vote but no vote except in case of a tie when the president shall cast the deciding vote. Local 542 IUOE has no member on the Executive Council in Philadelphia in spite of continuous protests of Local No. 542. The (3382) action of the council therefore has no effect since the council has not complied with the law governing it."

Signed Arthur D. Hill for William E. Maloney.

Q. Is there any conflict between the constitution of the Building and Construction Trades Council in Philadelphia, which has been offered in evidence in this case, and the constitution of the Building Trades Department?

A. If it is boiled down to words, it would be in conflict with the provision contained in the Building Trades Department constitution. The provision in the local Building Trades Council constitution provides for a limited number of members. It does not provide for a representative of every union or every craft affiliated. That is well known to the Building Trades Department. We took that matter up with them.

Q. Is it also well known to all of the unions affiliated with the Building and Construction Trades Council of Philadelphia?

A. It is very well known, and more particularly to the Engineers Union Local 542, and I have no knowledge of them ever having registered a protest up to the point (3383) of this telegram here, and that was not registered with us.

Q. Was the constitution of the local council, that is, the Building and Construction Trades Council of Philadelphia, approved by the national department, Building Trades Department?

A. It was approved or we wouldn't be permitted to operate under it.

Q. Mr. McDevitt, did the Governor of Pennsylvania make any effort to elicit the interest of the Building and Construction Trades Council of Philadelphia in solving the problem created by the Local 542 strike in 1952?

A. I understand he did contact our officers at the Philadelphia level. He did not talk with me.

Q. He had no contact with you personally?

A. No.

Q. Mr. McDevitt, did you have anything to do with Mr. Maloney's decision to take a part in attempting to straighten out the strike situation in Philadelphia?

A. I believe that I would be primarily responsible for getting Mr. Maloney into this picture.

Q. And will you state why and what you did in that connection.

(3384) A. Well, after all of the efforts we made to try to reconcile the differences and to get some peace and order out of chaos, we made several appeals to President Maloney, asking him to take some action to try to relieve us of this very serious problem. We did that on several occasions. We explained to the president the extent to which we went in our efforts to solve it and received his assurance that he would look into it thoroughly.

MR. FREEDMAN: If the Court please, I object at this point unless the witness says that he personally did these things.

THE COURT: I think he is taking a personal responsibility, aren't you, Mr. McDevitt?

THE WITNESS: Fully, judge.

MR. FREEDMAN: But what I am objecting to is that unless he personally attended to these things and knows of

his own personal knowledge and not what somebody else told him ——

THE COURT: I haven't understood him to say other than he personally did. Perhaps the use of the word "we" connotes that somebody else worked with him, but I have assumed that everything he says he did personally.

(3385) BY THE COURT:

Q. Is that right?

A. There was one occasion, Judge, where the other officers of the council met with President Maloney along with myself. The latter occasion I met with him and there were just the two of us had the discussion that I referred to before.

Q. All right, now, can you pinpoint those, Mr. McDevitt?

A. Yes, I can. There were several earlier discussions—I can't recall the date; our records would show that—where the officers of the Philadelphia Building and Construction Trades Council met with President Maloney in an effort to bring about an adjustment of this problem.

Q. In Washington?

A. It was in Washington, yes.

* * * * * * * * *

(3386) BY MR. WOLFE:

Q. Will you tell us what contacts you had with Mr. Maloney on the subject.

MR. FREEDMAN: May I ask whether there was a date for that meeting that Mr. McDevitt testified to.

THE WITNESS: I don't have the dates before me, but it was immediately prior to the action that was taken by the

International Union in this case, and I met with Mr. Maloney and went over this matter in detail with him and pointed out that we had to have some relief, that our contracts were in jeopardy, our people were walking the street without justification, and no one was doing anything to give us the relief that we were entitled to. I was assured by President Maloney that the matter would be fully investigated by him and that he would take appropriate action if it was warranted. That was the conversation that was had with President Maloney.

* * * * * * * * * *

No. 230

Office Supreme Court, U.S.
FILED
JUL 29 1958
JOHN T. FEY, Clerk

IN THE

United States Court of Appeals

FOR THE THIRD CIRCUIT.

Nos. 12267, 12268, 12269, 12270 and 12289.

ROY J. UNDERWOOD,
Appellant in Nos. 12267, 12269,

v.

WILLIAM E. MALONEY, Individually and as representative of The International Union of Operating Engineers.

HOMER DAWSON, GERARD LEONE, JAMES RUSSELL, ROBERT WALSH, COLOMBO ACCHIONE, EDMOND FARMER, MICHAEL CONCORDIA, NORMAN GALE, STANLEY KOSIOREK, GERALD GILROY, JOSEPH MARTIN and CLARENCE SWEENEY, in Their Own Behalf and on Behalf of All Members of Local 542 and Its Branches 542-A, 542-B and 542-C of The International Union of Operating Engineers,
Appellants in Nos. 12268, 12270,

v.

WILLIAM E. MALONEY and HUNTER P. WHARTON, Individually and as Representatives of and on Behalf of The International Union of Operating Engineers,
Appellees in Nos. 12268, 12270,
Appellants in No. 12289.

APPEALS FROM THE ORDERS OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

APPENDIX FOR APPELLEES IN NOS. 12267 TO 12270 INCLUSIVE AND APPELLANTS IN NO. 12289.

VOL. III (Pages 707b to 844b, inclusive)

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Volume III

PLAINTIFF'S EVIDENCE.

(1657) MR. O'BRIEN: Well, sir, just to make the record complete, I want to object to Mr. Freedman's offer of proof, for the reasons which I have already stated, and also I do think that the deposition of Mr. McGrath could be misconstrued in some places by some (1658) factions in our political setup, to the detriment of Mr. McGrath, when I personally believe and I am sure that there is no such reason for misconstruing his position in this case, and perhaps that might have been what Your Honor had in mind when you said it was a grave responsibility on Mr. Freedman, but I do think that people in public life are subject to pot shots.

THE COURT: I think it is subject to greater responsibility with respect to his own clients.

* * * * * * * * *

(1670) J. HOWARD McGRATH, having been duly sworn, was examined and testified as follows:

BY MR. FREEDMAN:

* * * * * * * * *

(1767) Q. Did you have any expenses other than your fee which you submitted, General?

A. Yes. I think it amounted to a couple hundred dollars, $230, something like that.

Q. Sir?

A. About $230, and included telephone—long-distance telephone calls and my expenses to Chicago.

Q. Your expenses to Chicago covered what? Just your train fare?

A. Transportation. I think, if I remember it—I could be wrong about this, but as I remember it, I think I paid all the bills and bought the tickets home because of Halloran's (1768) illness and then billed him for it. Anyway, it came to around $230, $240.

Q. You didn't buy the tickets going to Chicago, did you?

A. I bought my ticket to Chicago.

Q. You bought your own, but you didn't buy his?

A. No, as I remember it, I did not buy his.

Q. And everything beyond the railroad tickets were telephone calls. Was there anything else?

A. Nothing else, no.

Q. Have you got a record of the telephone calls which were made?

A. No. They were made from various places, from home, and from Rhode Island.

Q. Do you know Richard Gray of the Building Trades Department?

A. Not personally, no. I know there is such a man, but I don't know him.

Q. Did you ever have any contact with him regarding the matters involved in the case?

A. No, sir.

Q. Have you ever discussed the case with Mr. Meany at any time following your first telephone conversation?

A. No.

Q. Not to the present date?

(1769) A. No.

Q. You never told him the results of your activities?

A. No, I never had occasion to. He never asked me, and

I never had occasion to tell him. I presume he knows that was happening within his Federation.

Q. How frequently have you seen him since that time?

A. Oh, very infrequently.

Q. Well, how infrequently would it be?

A. Maybe run into him once every six months.

* * * * * * * * *

(1875) AFTERNOON SESSION.

MR. FREEDMAN: If the Court please, I have Mr. Jacoby here in court now, and I could just introduce the one phase of the testimony with him.

THE COURT: Very well.

MR. FREEDMAN: Counsel would like to have a discussion with Your Honor at side bar.

(The following discussion took place at side bar:

MR. JACOBY: Judge Clary, in this matter here they wish me to testify as to the amount that was paid to Mr. McGrath. I have no objections to that, and I know what the figures are.

They also would like me to testify to the fact that I received a forwarding fee. It seems to me that is something that is of a pretty personal nature to me, and while I have no objection to telling you that I have received a forwarding fee, I certainly wouldn't want it printed around in the newspapers the 179 clients that I had at that time, and this came to me not because of any prearrangement, but it was sent to me after I cleaned (1876) the entire matter up. It was not a conditional arrangement.

THE COURT: Can we not put of record here what he got?

MR. FREEDMAN: Whatever Your Honor wants.

MR. O'BRIEN: All right.

MR. JACOBY: I will be glad to.

THE COURT: All right, as an officer of the court you can tell me and we will put it of record here.

MR. JACOBY: I will give you the entire statement.

I paid Mr. McGrath two checks, one for $5000 at the end of May, 1952, and another check for $20,223.20 at the end of October, 1952. Of that total sum, $223.20 represented his expenses to Chicago, which included the railroad transportation for Mr. Halloran and himself and the hotel bill.

Mr. McGrath in November of 1952 sent me a check for $10,000 as a forwarding fee.

I deposited that check in the Fidelity-Philadelphia Trust Company in my own account. I then drew a counter check for $3000 to the order of (1877) my partner, Henry W. Maxmin, who has a 30 per cent interest in my firm. I kept the other $7000 for myself.

That is it.

MR. FREEDMAN: One question for the record. This fee of $25,000, that was compensation to Mr. McGrath for the services he performed for Mr. Halloran?

THE COURT: $20,000, was it not?

MR. FREEDMAN: $25,000 all together.

THE COURT: Yes, that is right.

MR. JACOBY: That was for compensation for services rendered as a result of my having retained him as my associate with me in the entire matter.

MR. FREEDMAN: For the services which he rendered in behalf of Mr. Halloran or the Associations?

MR. JACOBY: Of the Associations and all the clients whom I represented, whom I appeared as counsel of record for in my appearances.

MR. FREEDMAN: That fee that he got was for the services that he rendered that have already been outlined here in Mr. McGrath's deposition? That is what I am trying to get at.

(1878) MR. JACOBY: Well, whatever he stated in his deposition I don't know, and I have not attended the hearing, but I will say this, that I retained him sometime in May, and he was associated with me from that time until the end, and whatever services he outlined I am sure that is what he did.

I also allowed him to read the record of what I had done in the state courts at the time.

MR. FREEDMAN: I asked you one question, Mr. Jacoby, and I don't want to get any further.

MR. JACOBY: All right, ask it over again.

THE COURT: I think his answer is yes.

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(1775) MR. O'BRIEN: If Your Honor please, I object to the introduction into evidence of the deposition of

George Meany on the ground that it is irrelevant and immaterial and incompetent and not related to the subject matter here on trial.

THE COURT: That I do not know. As matters progress I will decide that. I will not make a preliminary (1776) decision on it. I have not read the deposition.

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GEORGE MEANY, having been duly sworn, was examined and testified as follows:

BY MR. FREEDMAN:

* * * * * * * * *

(1783) Q. What was your conversation with Mr. Maloney?

A. Told him that Mr. J. Howard McGrath was attorney for some employer or group of employers, I can't be sure which, and that they were having difficulty in Philadelphia, and that he wanted to get in touch with Mr. Maloney and talk to him, and with the idea in mind that there might be some way to settle the trouble, that Mr. Maloney might be of help?

Q. What else if anything was said between you and Mr. Maloney?

A. Mr. Maloney replied that he would be in his office in Chicago within the next couple of days, and Mr. McGrath could call him and make arrangements to meet him.

Q. And what was your response to that?

A. That I would convey that message to Mr. McGrath.

Q. What else was said?

A. That is all.

Q. You didn't say anything about the strike?

A. No.

Q. Didn't say anything about talking about the strike?

A. No. I told him there was trouble on there, but I didn't know anything about it.

Q. What did you say about trouble?

A. That Mr. McGrath said that he was representing the (1784) employer or employers, and that there was a dispute on, and that he felt Maloney could be helpful in reaching an amicable settlement of the dispute.

Q. Did you tell that to Mr. Maloney?

A. Yes.

Q. And did you give that your endorsement to Mr. Maloney?

A. I did not give any endorsement. How could I give any endorsement?

Q. Did you ask Maloney ——

A. What do you mean by endorsement?

Q. Did you ask Mr. Maloney to lend his efforts?

A. I did not.

Q. Well, what did you say?

A. I asked him if he would talk to Mr. McGrath, and he said he would.

Q. Do you know whether he did?

A. I don't know of my own personal knowledge, but I assume that he did.

Q. Did you ever see Mr. McGrath about this?

A. No.

Q. He never came to see you at all?

A. No.

Q. Did Mr. Halloran come to see you about this?

A. Who?

(1785) Q. Mr. Halloran.

A. I don't know Mr. Halloran.

Q. When you called Mr. Maloney, didn't you make an appointment for Mr. McGrath and Mr. Halloran?

A. I did not.

Q. Didn't you know that Mr. Halloran was with Mr. McGrath?

A. I don't know who Mr. Halloran is now, didn't know then. The name doesn't mean anything to me. Never heard of him.

Q. You mean this is the first time you have heard his name?

A. That's right.

* * * * * * * * *

(1798) Q. It couldn't have been a couple of weeks before, could it?

A. No, I don't think so.

Q. You are sure about that?

A. I am quite sure about that.

Q. Did you ever talk to Mr. McGrath subsequently about it?

A. Not to my knowledge.

Q. When I say subsequently, I mean subsequent to the first telephone conversation you told us about.

A. No, I don't think I have ever talked to him at all about that.

MR. THOMAS: I object to that. That is not a correct statement of what the witness said. He said he talked to Mr. McGrath first, he talked to Mr. Maloney, and then he called Mr. McGrath back the second time.

(1799) BY MR. FREEDMAN:

Q. Did you call McGrath back a second time?

A. I called McGrath the same day that he called me.

MR. THOMAS: That's right.

THE WITNESS: The sequence was this: McGrath called me. I reached out and called Maloney. Maloney gave me some information as to where he would be available. I relayed that information to Mr. McGrath the same day, whenever that was, in May or June. And I never talked to Mr. McGrath about this case after that.

* * * * * * * * *

(1836) Q. Mr. Meany, did you see, or were you in contact with Joe Fay either before or during the strike that is the subject matter here? That is, in the summer or—spring or summer of 1952.

A. No.

* * * * * * * * *

(1839) Q. Did you talk to William Carter either on the telephone ——

A. No.

Q. During that period?

A. Not that I recall, no. I don't think so. I didn't see Bill Carter for, oh, a number of years prior to his death.

Q. Did you know him well?

A. I did know him well some years ago. When I was in New York, he was active over there in Jersey, and I was active in New York. I knew him quite well. I knew his wife. I used to run into them now and then, but I hadn't seen him in a good many years before his death.

Q. You don't remember the last time you saw or were in touch with Mr. Carter?

A. No, I don't, but it is a number of years back. I would say maybe four, five. I am not sure about that. I haven't seen him in quite a long time.

Q. Were you in touch with any of the representatives of the New Jersey local of the Operating Engineers during the year 1952?

A. I don't know, no. During A. F. of L. conventions and meetings there are any number of representatives of various unions, thousands of unions all over the country, and whether or not I met any of the representatives of the New Jersey Operating Engineers in that period, I couldn't say for sure. (1840) I meet hundreds and hundreds of people every week, and it is possible that I could have seen some of these people and said hello to them, but I have never had any discussions with them on any such subject as this.

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(1844) Q. Do you know a man by the name of Weber from the New Jersey local?

A. Yes.

Q. Do you know what his right name is?

A. I do not know him by any name but Weber.

Q. Do you know his first name?

A. Peter.

* * * * * * * * *

Q. Did you speak to him from time to time?

MR. WOLFE: That is objected to.

THE COURT: Overruled.

A. Well, when I meet him I speak to him.

Q. Did you have occasion to meet him within—during the past several years?

(1845) MR. WOLFE: That is objected to.

THE COURT: Overruled.

A. I say, I don't know what you mean when you say did

you have occasion to meet him. What does that mean? If that means did I seek to meet him, or did he seek to meet me, the answer is no. But did I run into him now and then? Sure, I run into him quite often.

Q. Quite often?

A. Well, about once a year.

Q. And did you discuss business affairs when you ran into him?

A. No, not that I recall, no. I have no business with him.

* * * * * * * * *

Q. Did he talk to you about the Philadelphia union, the Local 542?

A. No.

Q. Are you sure?

A. I am positive.

Q. Of that you are positive?

(1846) A. Of that I am positive. In fact, I don't think he ever talked to me about any business. He says, "Hello," and "How are you?"

And I say, "How are you?" He is generally around our conventions I see him. I see him about once a year.

Q. What about some of the other Representatives from the New Jersey union—local of the International Union of Operating Engineers; do you know who they are?

A. No, I do not.

* * * * * * * * *

(1847) Q. Do you know what Carter's position was?

A. I think he was one of the business agents, too.

Q. Did you know that he had a son, John Carter?
A. No.

* * * * * * * * *

(1853) Q. Was Carter at the Executive Council meeting in Atlantic City in August of 1952 along with Maloney?
A. No.
Q. He wasn't there at all?
A. He was not at the meeting. Whether he was in Atlantic City, I couldn't tell you.
Q. You don't remember seeing him at all?
A. No, no, I don't remember seeing him.
Q. Did you during that period see or speak to anyone else regarding the affairs of Local 542 of the Operating Engineers?
A. Not to my recollection, no, I did not.
Q. Did you see or speak to McGrath during that period?
A. No.
Q. Did any of the contractors come to visit you or try to visit you?
A. Not me. I don't know any of the contractors.
Q. When Maloney told you in August of 1952 that the strike had caused unemployment to other members of the building trades crafts, did you consult anybody else about that situation?
(1854) A. No.
Q. Who was head of the Building Trades Council at that time?
A. Building Trades Council where?
Q. Building Trades Department.
A. Oh, Building Trades Department.
Q. Yes.
A. Gray.
Q. Richard Gray?
A. Yes.
Q. Did you talk to him about it?

A. No.

Q. Did you see or talk to the representative of the Building Trades Department in the Philadelphia area?

A. No.

Q. Do you know who that would be?

A. I do not.

Q. Did you talk to James McDevitt during that period?

A. I might have talked to McDevitt if he was at the meeting. He comes to most of our meetings.

Q. Did he talk to you about this situation?

A. I am quite sure I wouldn't talk to him about this situation. No, he didn't. No, I don't think he would know anything about it, because at that time he was in his new job, I think, by that time.

(1855) Q. Didn't you know that he was a defendant in that lawsuit?

A. No, I didn't. In what capacity? As president of the State Federation? See, he was working for us at that time. As head of the—I think so. Maybe I am wrong. Let's see. Oh, yes, yes. He was working for us before that. A year before that, at least, because Herb Rivers died in 1950, and Keenan shifted over to the Department early in 1951, and McDevitt came in within a month or two or three months afterwards.

Q. But you say you don't know he was a defendant in that lawsuit?

A. No, I did not.

Q. Even though the lawsuit was discussed at your Executive Council meeting?

A. The lawsuit was discussed at the Executive Council meeting, if you constitute—if you would describe Maloney telling us that an action, an injunction had been sought, if you would call that discussing a lawsuit. Now, I wouldn't call that discussing a lawsuit. In fact, there wasn't any discussion at all. He just merely said there was an injunction sought. I didn't discuss it, and as far as I know neither did anyone else.

Q. Did you know Delaney of the Operating Engineers?
A. Yes.
(1856) Q. Do you know what position he held?
A. He runs a local up there in New York, and he is a vice-president of the International.

* * * * * * * * * *

Q. Did you ever talk to him about the local situation in Philadelphia?
A. No, never, never.
Q. Have you been made aware of the criticism that has been leveled at Delaney in connection with the Welfare Fund?

MR. WOLFE: That is objected to.

THE COURT: Sustained.

Q. Well, are you aware of the newspaper publicity that has been given to his activities?

MR. WOLFE: That is objected to, if Your Honor please.

THE COURT: Sustained.

(1857) Q. Have you started any investigation in your Federation to check on the activities of welfare programs generally?

MR. WOLFE: That is objected to.

THE COURT: Overruled.

A. We have taken action at our convention recommending that the International Unions look this field over, and we have collected whatever data we can on the whole question of Welfare Funds, and we intend to furnish the Internationals with whatever information that we get, in order that they may find some way to specify regulation of these funds, if they so desire.

Q. Has your investigation included coverage of Mr. Delaney's participation in the ——

MR. WOLFE: That is objected to.

THE COURT: I will sustain the objection.

Q. Did you appoint the committee?

A. Appoint the committee?

Q. Yes. To make the investigation.

A. No.

Q. Who appointed them?

(1858) A. Well, there isn't any committee that I know of, so how could they be appointed?

Q. I thought you were referring to a committee before when you said "we."

A. No, I am referring to our research people here.

* * * * * * * * *

Q. Do you know Hunter Wharton?

A. Yes.

Q. Well?

(1859) A. No.

Q. How long have you known him?

A. Since he came here to Washington. That would be six, seven, eight years ago, I guess. No, I guess less than that.

Q. Do you know what his present position is?

A. No, I do not.

Q. Do you know what union he is affiliated with?

A. I sure do.

Q. Which one?

A. International Union of Operating Engineers.

Q. Do you know what his present position is?

A. No, I do not.

Q. Do you know that he is presently supervisor of the Local 542?

A. I do not.

Q. The union in question.

A. I do not.

Q. You don't even know that?

A. No, sir, I don't even know that.

Q. Have you discussed any of the Local 542 affairs with Mr. Wharton?

A. I have never discussed anything with Mr. Wharton.

Q. Do you as head of the American Federation of Labor make any investigation of any International Unions for the pro- (1860) tection of the members of the locals of a union?

A. No.

Q. Don't you regard the interests of the members of the locals as paramount?

A. Yes, I do.

Q. And if a charge is preferred to you that there is an injustice done, don't you regard it as proper to make an investigation?

MR. WOLFE: I object to this line of interrogation on the ground of lack of any materiality or relevancy to the issue.

THE COURT: I will overrule the objection.

A. Well, it isn't a question whether I regard it as proper or not. The big thing is that it is not possible.

Q. It is not possible?

A. No.

Q. Why?

A. Couldn't possibly—If we took on the job of investigating the complaints of individuals, of local unions, we would need a staff at least ten times our present staff. We have got to depend on our Internationals. You see, the American Federation of Labor is a federation of International (1861) Unions, each one free and independent.

And you would not expect the White House, for instance, to investigate a complaint of the citizens of Annapolis, Maryland, against the Mayor of the City of Maryland—of Annapolis. That would naturally go to the county, to the state. It certainly would not go to the Federal government.

We are in exactly the same position. We have over 44,000 local unions connected with various Internationals, and the Internationals run their affairs, and they run them under a constitution and bylaws, and if they have any complaints, they have the machinery within the Internationals to straighten them out.

We couldn't possibly entertain that kind of a complaint, because we couldn't possibly give that type of service. We haven't got the money to pay for it, and it would be an injustice on the American worker to ask him to give us the money to pay for it.

Q. And yet you took action against the International Longshoremen's Association?

MR. WOLFE: Just a moment. That is objected to.

THE COURT: Overruled.

(1862) A. Yes, sir, we did. I knew you would ask that.

Q. You were waiting for that one?

A. Yes, sir, we did. Do you know why? Because that came to us in the form of sworn testimony in the public press, and in the reports of a Crime Commission of admitted

fraudulent acts by the officers of the International Union, which they admitted under oath, that they had committed acts that were to the detriment of their members. And we demanded that they rectify that situation. We demanded that they try the people responsible, and when they failed to do that, we took the only recourse—the only possible sanction that we have under the rules of the American Federation of Labor, we told them they couldn't belong any more.

Q. And do you find a distinction between that kind of situation and one where a labor leader has been indicted?

A. Yes, yes, yes, I find that kind of a distinction where a labor leader is indicted, he goes to court and he gets a trial.

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(940) COLOMBO ACCHIONE, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

BY MR. FREEDMAN:

* * * * * * * * *

(975) Q. Did you do any picket duty during that strike?

A. No, I didn't.

Q. Were you working steadily throughout the strike?

A. Yes.

Q. Do you know any other men who did do picket duty?

A. Yes, I do. I know quite a few of them that was working on night shift in Morrisville, and they would go picket duty for a few hours in the daytime before they go to sleep.

Q. Did you get any help from any of the other trades in that strike?

A. Yes, we did.

Q. What other trades did you get help from?

A. Well, we got help from the Maritime Trade Union.

(976) Q. Maritime Trades Department?

A. That's right.

Q. What kind of help did they give you?

A. Well, they sent members to picket with our members.

BY THE COURT:

Q. Did you see them?

A. Yes, I did.

Q. Where did you see them?

A. Well, I saw them—they passed by the job that I was working. At this time I was working up State Road near the House of Correction. We were putting a sewer job over there, and they passed me. They asked me about ——

Q. Where were you working? You were working at Morrisville, a few minutes ago, during this same time. Now, where were you actually working?

A. I working in Morrisville, yes. I worked over there for a long time, but the time that I saw the pickets, I had come back and worked for Joe Lombardi.

Q. Let us get something straight. Where were you working on May 1, 1952, and where were you working between May 1 of 1952 and August 15 of 1952?

A. I think after the strike, we went on strike, it was either two or three weeks that the strike was going on, that's when I left Morrisville and I come to work for Joseph Lombardi (977) and Son.

Q. So you worked till the 15th or 20th of May up at Morrisville after the strike was on, then you came to Lombardi up on State Road; is that it?

A. Right.

Q. How long did you work for Lombardi up on State Road?

A. Oh, I worked there, I would say, close to a year.

Q. All right, that takes care of your time between May 1 and August 15. Now, what job did you pass that was being picketed and where?

A. Well, it was Morrissey. James Morrissey had an asphalt plant there right near that job, and that is what the pickets, they asked me where was Morrissey's plant and I told them.

Q. Some prospective pickets inquired from you? You didn't actually see them walking up and down on the picket line, is that what you are telling me, or did you see them? That is the question I asked you in the first place.

A. No, I actually didn't.

* * * * * * * * *

(1091) MR. O'BRIEN: If Your Honor please, I move that the witness' testimony not relating directly to the 1952 strike be stricken.

THE COURT: Denied. Motion denied.

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CROSS-EXAMINATION.

* * * * * * * * *

(1092) BY MR. O'BRIEN:

Q. I show you Defendant's Exhibit No. 30 and ask you if you will identify it for the Court. What is it?

A. Application.

Q. Your application?

A. It isn't mine. That is right. It is my application.

Q. You signed that application?

A. That is right.

Q. When you joined in 1938?

A. Right.

Q. And that is an application for membership, International Union of Operating Engineers?

A. That is right.

Q. Affiliated with the American Federation of Labor, Local Union No. 542?

A. That is right.

Q. Right. Now, would you read for the record what appears on the face of the application.

A. Right in here?

Q. That is right.

A. "Gentlemen:

(1093) "Having formed a favorable opinion of your Union, I hereby make application to become a member thereof and if accepted I agree as follows:

"That I will remain a member until expelled; that I will not violate any of the provisions of the Constitution, Rituals, By-Laws, Customers, Rules, or Mandates of the order, that I will not enter into or sign any individual contract of employment with any person, firm or corporation, or any contract or agreement which provides for the withdrawal of my membership from this union; I further agree in the event of a claimed grievance against the Union to faithfully observe the procedure of, and fully accept as final the findings of the Trial Boards within the order, and I hereby expressly waive any right to institute proceedings in any court of law or equity against the Union; I further agree to conform to and abide by all laws, rules, regulations and orders stipulated in the Constitution and By-Laws, or given by those in authority.

"NAME: Colombo Acchione."

(1141) GERARDO LEONE, having been duly sworn, was examined and testified as follows:

* * * * * * * * *

(1252) MR. O'BRIEN: If Your Honor please, I move at this time to strike all the witness' testimony not directly relevant to the 1952 strike.

THE COURT: Denied.

CROSS-EXAMINATION.

BY MR. O'BRIEN:

Q. When you joined the union, Mr. Leone, did you sign an application?

A. Yes, sir.

Q. I show you Defendants' Exhibit No. 2 and ask you if it was in the same form as that exhibit.

A. Yes, this is the—I take this to be the regular form of application to Local 542.

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(1253) ROBERT WALSH, having been duly sworn, was examined and testified as follows:

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(1292) CROSS-EXAMINATION.

BY MR. O'BRIEN:

Q. When you joined the union, Mr. Walsh, you signed an application, did you not?

A. Yes, I did.

Q. I show you Defendants' Exhibit 2 and ask you if

(1292a) the application which you signed at that time was in the same manner and form as Defendants' Exhibit 2.

A. Yes.

* * * * * * * * * *

(1293) NATHAN WILLIAM UNRUH, having been duly sworn, was examined and testified as follows:

* * * * * * * * * *

(1305) CROSS-EXAMINATION.

BY MR. O'BRIEN:

Q. I show you Defendant's Exhibit 2, Mr. Unruh, and ask you if at the time you joined the Operating Engineers you signed an application in the manner and form as set forth in Exhibit D-2.

A. It looks like the same.

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(1306) MICHAEL CONCORDIA, having been duly sworn, was examined and testified as follows:

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(1351) CROSS-EXAMINATION.

BY MR. O'BRIEN:

Q. When did you join the union, Local 542, Mr. Concordia?

A. In 1940.

Q. When you joined did you sign an application for membership?

A. Yes, Mr. O'Brien.

Q. I show you Defendants' Exhibit 2 and ask you if the application for membership was in the same manner and form as this exhibit.

A. That's right.

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(1352) THEODORE C. McCARTY, having been duly sworn, was examined and testified as follows:

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(1372) MR. O'BRIEN: If Your Honor please, I move that the witness' testimony be stricken out in its entirety.

THE COURT: Denied.

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(1372) NORMAN W. GALE, having been first duly sworn, was examined and testified as follows:

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(1395) CROSS-EXAMINATION.

BY MR. WOLFE:

Q. Mr. Gale, I show you a document and ask you whether your signature appears on it.

A. That is me, yes, sir.
Q. That is your signature?
A. Yes, sir.

MR. WOLFE: I ask that the document which has been identified by the witness be marked as Defendant's Exhibit No. 33.

(A photostatic copy of a Union card was marked for identification as Exhibit D-33.)

BY MR. WOLFE:

Q. This is D-33, and I ask you did you identify this, Mr. Gale?
A. Let me see that, Mr. Wolfe, a minute.
Q. Will you identify that and tell me what it is.
A. If I remember correctly—and I am sure I do—the (1396) card I signed was just one card and did not have all of this on it. It was just one white card, if I remember correctly, a heavy card.
Q. Mr. Gale, does your signature appear on three different parts on Exhibit D-33? Will you examine it and tell me whether your signature appears on any line of that exhibit?
A. That is my signature all right.
Q. This is your application for membership in Local 542?
A. As I say, it was on just two sides of a card: I didn't think there was that much printing on it or that much.
Q. This is a photostatic copy. This is not the original card.
Mr. Gale, did you attend all of the meetings of the membership following the order of supervision which was entered on August 19, 1952?
A. Not all of them, no, sir.
Q. Which was the first one you attended?

A. Well, I think the first one I attended Mr. Denoncour opened.

Q. Do you recall when that occurred?

A. No, I don't, no, I don't, but I know there was (1397) a long lapse between that one and the one that McCarty got beat up on, I know that.

Q. Well, the one at which the McCarty incident occurred was held when?

A. When? It was a March meeting in the Broadwood Hotel. I think it was 1953.

Q. It was the March following the imposition or the invoking of supervision; is that correct, the following March?

A. I think it was.

Q. That meeting was held at the Broadwood Hotel?

A. What meeting was that, sir?

Q. The one we are talking about, the one you just referred to.

A. The one with McCarty or the first meeting, you mean?

Q. I am talking about the McCarty meeting.

A. The McCarty meeting? That was held at the Broadwood Hotel.

Q. Will you tell us about how many people were there?

A. Well, I am not so good at judging figures. It was a side room. It wasn't the big room. It was off, I think, the Crystal Ballroom, or something, but the length of the hall was greater sideways than it was this way (indicating). (1398) It was a short way from the body of the membership to the dais, I remember that, but I couldn't say how many were there. I don't count people that way. I don't really know.

Q. You don't know whether there were several hundred or several thousand?

A. There were several hundred, but how many hundred I couldn't say, but there were several hundred.

Q. There were several hundred?

A. Yes, sir.

Q. Was this the second meeting you attended after

supervision, or had you attended other meetings prior to this one except the one that Denoncour led?

A. Well, I don't know now. I think there was one—that was the first meeting I had went to when Mr. Denoncour was there.

Q. And you think this was the second one?

A. What is that?

Q. Was this one the second one?

A. I think it was.

Q. Did you go there with McCarty?

A. Yes, sir.

Q. Who else went with you to the meeting?

A. Went with me?

(1399) Q. Yes.

A. Nobody.

Q. Just you and McCarty?

A. I had met McCarty out on Broad Street, and we went in together.

Q. I don't care where you met him. I asked you whether there was anybody else present besides you and McCarty that went to the meeting together.

A. Not in company with me, no.

Q. You referred in your testimony to the office—you said you called the office. What office were you talking about?

A. That is the office that we had installed Mr. Underwood in to do the business of this lawsuit.

Q. Whom do you mean by "we"?

A. We? Me for one.

Q. Who were the others that you included in the use of the pronoun "we"?

A. Oh, there were a lot of us at different times, all different kinds, different names.

Q. Who were they?

A. Well, there is a lot of them in the room here now with us—Hogan, Russell, Priscopo, Mr. Acchione, Mr. Testa, Mr. Toppi, Mr. Wallace—oh, numerous others. (1400) I couldn't name all of them.

Q. All of you had an office, did you?
A. Yes, sir.
Q. Where did you have your office?
A. Broad and Columbia.
Q. That is about how far from the Broadwood?
A. Well, I think Columbia Avenue is 900, and the Broadwood is three or four hundred, about five or six blocks.
Q. Yes, you had been in the office before you went to the Broadwood that night, had you not?
A. No, sir.
Q. You had not?
A. No, sir.
Q. You are sure of that?
A. Positive.
Q. Had you been in touch with the office before you went to the meeting?
A. Not that day. I spent a lot of time in the office.
Q. Yes.
A. But I hadn't been there that day.
Q. With whom at the office or elsewhere did you discuss going to the meeting that night?
A. I didn't discuss at the office—or only up at the job (1401) I told McCarty I was going to the meeting.
Q. You and McCarty were working on the same job at that time?
A. Yes, sir.
Q. Who else was present when you told that to McCarty?
A. I just don't know. I really don't know who was around or whether anybody else was around when I told them I was going.
Q. Incidentally, what job was that?
A. That was the United Engineers job at Phoenixville, the Cromby Station.
Q. Was McCarty the master mechanic on that job?
A. No, sir.
Q. Who was the master mechanic?
A. Nate Unruh.

Q. Who?

A. Mr. Unruh.

Q. Who were the other members of Local 542 who were working on that job?

A. Gee, there were a lot of them.

Q. I mean was Mr. Underwood the only master mechanic on the job?

A. Oh, no.

Q. Who were the other people working under Mr. Unruh as (1402) master mechanic? Were you and McCarty ——

A. Under Mr. Underwood as master mechanic?

Q. Under Mr. Unruh as master mechanic.

A. Mr. Unruh was the master mechanic. There were no master mechanics under him.

Q. I asked you who were the other members of Local 542 who were working under Mr. Unruh on that job.

A. Oh, that fluctuated from time to time, and there might be 20 or 30 men, there might be 40.

Q. At the time of the McCarty meeting?

A. Well, there was about, I think there was about 30 or maybe 40 engineers.

Q. Will you name them, please?

A. Sir?

Q. Will you name them, please?

A. Well, I can name some of them.

Q. All right, name as many as you can.

A. I will do that. Of course, there was myself. I will put myself first.

There was Steve Beck, Mr. Hogan, Frankie Priscopo, Bob Walker, and a couple guys at the power plant, Brown, he is dead now. And the oilers, there was Jimmie Gargan, John McGuckin.

Q. Were they all members of the group that went to the (1403) office that you referred to?

A. From time to time they would show up there.

Q. Now, what did you understand was the purpose of

this meeting of March, 1953 at which the McCarty incident occurred?

A. What did I understand the purpose of it was?

Q. That's right.

A. I didn't understand nothing. I just knew there was a meeting. I got a notice there was a meeting. That's all I knew of it.

Q. Do you recall what the notice said of the meeting as to the purpose of the meeting?

A. No, I don't.

Q. You knew, did you not, the purpose of the meeting was so that the supervisor could report to the membership what course of supervision or progress was being made during the supervision?

A. I didn't know what he was going to do.

Q. You did not know that that was the purpose of the meeting?

A. No, I didn't know it. I knew there was a meeting, and I went.

Q. Did you discuss going to the meeting with Underwood before you went there?

(1404) A. No, I did not, not to my recollection.

Q. Would you say that you did not discuss it with Underwood before you went to the meeting?

A. I would.

Q. Did you discuss it with Mr. Unruh before you went to the meeting?

A. Well, I don't know as I discussed it with him, but I imagine he knew I was going, because he knew I did go to the meetings.

Q. Well, what was your purpose in going to the meeting, Mr. Gale?

A. To find out what was going on and what was what, like I go to all of the meetings, like I always went to the meetings, to see what was being done within the union.

Q. Now, I believe you testified that when the meeting convened it was opened by Mr. Wharton; is that correct?

A. Well, I might have said that, but ——

Q. Would that be correct?

A. I knew while this discussion was going on on the floor with Leone that Mr. Wharton was standing up there.

Q. You mean that a discussion took place before the meeting was formally opened?

A. No, no, when Mr. Leone was asking to have these men put out of the room.

(1405) Q. I didn't ask you that, Mr. Gale. I asked you how the meeting was opened, or wasn't the meeting ever opened?

A. Well, gee, we went out of there, and McCarty got beat up. There was a meeting there. Mr. Wharton sure was up there.

Q. Who opened the meeting?

A. I thought it was Mr. Wharton.

Q. What did he say?

A. I just don't recollect what he said. This thing on the floor started right away. There wasn't nothing much said.

Q. Mr. Leone got up and began to protest about the presence of people on the platform before the meeting was ever opened?

A. Well, I think he was the first one on the floor.

Q. Can you answer the question I asked you?

A. Again, please?

MR. WOLFE: Will you read it to him?

(Question read.)

A. Oh, no, no, I don't think so.

BY MR. WOLFE:

Q. I can't hear your answer.

A. I don't think so. It was either Mr. Lavery or Mr.

(1406) Wharton had opened the books and opened the meeting, and I just don't know who opened the meeting, but I know that the intercourse took place between Mr. Wharton and, well, this trouble was going on, and Mr. Wharton was doing the talking.

Q. But you have no recollection of who opened the meeting or what was said by the persons who opened the meeting as to what the purpose of the meeting was?

A. No, I haven't.

Q. In any event, within a short time after the meeting was opened Mr. Leone takes the floor; is that correct?

A. That is right.

Q. He protested about the presence of other people on the platform at the meeting?

A. As soon as he could be heard, he did.

Q. Mr. Wharton said in effect that the people who were on the platform would stay there, they were his guests; is that correct?

A. That is what I understood.

Q. You knew, did you not, that Mr. Wharton—that the union was under supervision?

A. Yes, sir.

Q. And you knew that Mr. Wharton was the supervisor, (1407) the duly-appointed supervisor, of the union, did you not?

A. Yes, I did.

Q. And Mr. Leone would not and did not pay any attention to what Mr. Wharton said at that meeting?

A. Mr. Leone and a lot of other people.

Q. I didn't ask you about other people. I am asking you about Mr. Leone.

A. That is right.

Q. He insisted that regardless of what Mr. Wharton said he should be—he should continue to be allowed to speak and express his opposition to having anyone in the room other than members of Local 542; is that correct?

A. That's right.

Q. Now, I think you said that later on during the meeting Mr. Wharton in effect said he would give the floor—I think that was the expression you used—to Frankie, and I suppose by Frankie you mean Mr. Lentino; is that correct?

A. That's right, that's right.

Q. You said that we didn't want to do that. Will you tell me what you meant by that? I am quoting your words, "We didn't want that." What did you mean by the phrase, "We didn't want that"?

(1408) A. Well, we wanted Mr. Wharton to do what we thought was right and put these other strange people out of the room before the meeting went on.

Q. Again disregarding what Mr. Wharton, although he was the supervisor of the union, had ruled, and you insisted nevertheless upon proceeding with the position that you and Mr. Leone and perhaps others had stated with respect to the people on the platform?

A. That is right.

Q. Is that correct?

A. Yes, sir.

Q. Now, you said, I believe, that Lentino then moved toward McCarty, and McCarty moved toward Lentino.

A. Yes.

Q. Did you say that?

A. Yes.

Q. Suppose you describe that. You and McCarty were sitting beside each other, weren't you?

A. Yes.

Q. Where was Lentino when this occurred?

A. He was to our right.

Q. How far away?

A. And forward.

(1409) Oh, about 15 feet.

Q. Were there people between you and between Lentino and McCarty?

A. A few people, yes.

Q. McCarty was standing at the time?

A. Well, most of the hall was standing. Everybody was practically standing.

Q. McCarty went toward Lentino, did he?

A. When Lentino started to take off his coat and come for McCarty, McCarty got himself ready.

Q. You said McCarty went toward Lentino?

A. Yes.

Q. What did you mean by that? Describe what you meant by that, would you, please?

A. When McCarty went towards Lentino?

Q. Yes, what did you mean by saying he went toward Lentino? Do you mean he walked over toward Lentino?

A. That's right.

Q. Now, following your statement about that incident, you said the membership still insisted upon putting out the people on the floor, the people who were not members of 542. Who expressed any such position at that time?

A. Well, it was all over the hall. The people were (1410) saying, "Put them out. Go into executive session."

I couldn't say just who was doing it. I for one was.

Q. What other people from your committee or from your office were in the office that night?

A. Well, I don't know who was there. There was nobody with McCarty and I.

Q. Was Underwood there?

A. No, sir.

Q. Was Dawson there?

A. I don't remember seeing Homer Dawson.

Q. What is that?

A. I don't remember seeing Homer Dawson.

Q. Was Unruh there?

A. No, sir.

Q. Leone was there?

A. Leone was there, naturally.

Q. Was James Russell there?

A. Yes.

Q. Was Robert Wallace there?

A. Yes.
Q. Was Acchione there?
A. I think he was.
(1411) Q. Was Farmer there?
A. I don't remember seeing Farmer.
Q. Concordia?
A. Concordia was there.
Q. Gale—you were Gale.
Kosiorek—is that the way it is pronounced?
A. I don't know.
Q. You don't know Stanley Kosiorek?
A. I know Stanley, but I don't remember him being there.
Q. Didn't he go with you to that meeting?
A. Go with me? I explained to you nobody went with me to McCarty ——
Q. Answer the question, please.
A. No, he didn't go with me to that meeting.
Q. Was Gilroy there?
A. I don't remember seeing Gilroy.
Q. Was Joseph Martin there?
A. I don't remember seeing Joseph Martin.
Q. Was Clarence Sweeney there?
A. Well, as I say, I don't remember seeing him. He might have been there, but I don't remember seeing him. I didn't take notice too much of who was there.
(1412) Q. Actually, you and McCarty and others went to that meeting for the purpose of breaking up the meeting and to prevent its being held; isn't that right?
A. I can't speak for everybody, but I sure didn't. I never heard of anything like that, to break up the meeting. We wanted meetings.
Q. After the meeting was held, you called the office and reported to the boys; is that what you said?
A. Who? I didn't report to the boys. I told them I was over to the station house, I would like to have a few of them come over and get me, before Mr. Pantaleo's people got me again.

Q. Mr. Gale, didn't you say on direct examination after the meeting you called the office and spoke to the boys about the meeting?

A. I went to the office.

Q. Didn't you say you called the office and spoke to the boys about the meeting?

A. I don't remember saying that. I spoke to the boys after the meeting at the office, after I come from the station house.

Q. Who are the boys?

A. Well, as I say, about the same names I mentioned. We (1413) are in the office when I got back there, and Mr. McCarty—Mr. McCarty was there, too.

Q. Was Underwood there?

A. Yes.

Q. He had been waiting in the office all during this meeting?

A. I don't know whether he was waiting there or not, but he was there when I got there.

Q. Was Mr. Freedman there?

A. No, sir, Mr. Freedman, I never saw him in the office.

Q. What time was this meeting held?

A. Well, I really don't know just what time it was. I imagine 8:00 o'clock, just like the other ones. I really couldn't state the time.

Q. What time did you call the office that evening after the meeting?

A. Well, I imagine it was around 9:00 o'clock sometime.

Q. You say you went to the meeting in Dover at which the Whitey Kaye incident occurred?

A. No, I didn't say such a thing.

Q. You were not at that meeting?

A. I was at the meeting where Whitey Kaye got it, but not in Delaware.

(1414) Q. Where was that held?

A. In the Broadwood Hotel, too.

Q. Who went with you to that meeting?

A. Nobody.

Q. With whom did you discuss it?

A. Sometimes you are going in the hall, and you meet people going in, but nobody specifically went with me.

Q. With whom did you discuss going to that meeting prior to the meeting?

A. I don't know as I discussed it with anybody. I went to the meeting.

Q. Did you discuss it with Underwood?

A. Not to my knowledge.

Q. Would you say that you did not?

A. I would say that I might have, and I might not. I can't tell you. It was common knowledge that I went to the meetings, though.

* * * * * * * * *

(1415) JAMES JOSEPH RUSSELL, having been first duly sworn, was examined and testified as follows:

* * * * * * * * *

(1441) CROSS-EXAMINATION.

BY MR. O'BRIEN:

* * * * * * * * *

Q. I show you Defendant's Exhibit 34 and I ask you if you can identify it.

A. Yes, sir.

Q. What is it?

A. That is my application to join a union.

Q. Is the signature thereon your signature?

(1442) A. Yes, sir.

* * * * * * * * *

(1514) JOHN J. TESTA, having been duly sworn, was examined and testified as follows:

* * * * * * * * *

(1524) MR. O'BRIEN: If Your Honor please, I move to strike the testimony of the witness as to the fight, on the

ground it was not connected or tied in or is material or relevant to any of the issues in this lawsuit. It was regarding a Building Trades Athletic Association and not on union business, as stated by Mr. Freedman.

THE COURT: The motion is denied, for other reasons which I consider pertinent, not on the ground that I consider the testimony relevant, but on other grounds than you have stated. If that was the only ground involved, I wouldn't hesitate to strike it. I think it is relevant for other purposes.

* * * * * * * * * *

(2890) THE COURT: We have here the excerpts from the arbitration proceedings filed by Mr. Freedman. It will be marked P-194.

Have you seen it, Mr. O'Brien?

MR. O'BRIEN: Yes, sir, we have seen it.

THE COURT: It may be marked as an exhibit at this point.

(Excerpts from arbitration proceedings previously marked Exhibits P-26-A, B, C, D, E were marked Exhibit P-194 and admitted in evidence.)

MR. O'BRIEN: I take it, if Your Honor please, that those excerpts are admitted of record in line with Your Honor's ruling that the whole transcript would not go in?

THE COURT: That is right.

MR. O'BRIEN: Sir, we take objection to those excerpts on the ground that they are for the most part not com-

petent, they are irrelevant, and there is a great deal of hearsay in those excerpts, and we would ask Your Honor's permission, if we deem it advisable or necessary as this case progresses, for the defendants to submit to Your Honor excerpts from that transcript.

THE COURT: You have that permission, Mr. O'Brien.

MR. O'BRIEN: Thank you, sir.
(2891) May the defendant proceed with motions?

THE COURT: You may.

MR. O'BRIEN: If Your Honor please, the defendants have three motions to address to the Court. We have submitted them in writing, and with Your Honor's permission, I would hand them up at this time and also present them orally.

In both cases, in the Underwood case, which is Civil Action No. 14398, and in the Dawson case, which is Civil Action No. 14547, the defendants move to strike from the record in each of the cases the following portions of the plaintiffs' evidence.

MOTIONS TO STRIKE PORTIONS OF PLAINTIFFS' EVIDENCE, RULINGS AND EXCEPTIONS.

1. All of the testimony and evidence of the plaintiffs and their witnesses with respect to any and all matters and incidents alleged to have occurred prior to May 1, 1952.

2. All of the testimony and evidence of the plaintiffs and their witnesses with respect to any and all matters and incidents alleged to have occurred prior to the election in

1948 of the plaintiff Underwood as President of Local Union 542.

3. All of the testimony and evidence of the plaintiffs and their witnesses with respect to any and all matters and incidents alleged to have occurred at or in connection with membership meetings of Local Union 542 prior (2892) to May 1, 1952, and since August 19, 1952, the date upon which supervision of said Local Union was established.

4. All of the testimony and evidence of the plaintiffs and their witnesses with respect to any and all matters and incidents alleged to have occurred with respect to or in connection with the following matters:

(a) The activities of Joseph Fay and Jasper White with respect to Local Union 542 and its members.

(b) The litigation in the Court of Common Pleas No. 2 of Philadelphia County in 1947, which resulted in an election by the membership of Local Union 542 conducted by Charles E. Kenworthey as Master.

(c) The arbitration in 1948-49 by Mr. Feinsinger.

(d) The collective bargaining agreement executed by Robert G. Kelly, Esq., as attorney for Local Union 542 in 1950, and the litigation with respect to the same.

(e) The various pending cases before the N. L. R. B. in which Local Union 542 is named as a party.

(f) The collective bargaining contracts negotiated for Local Union 542 since August 19, 1952.

(g) The comparison of the provisions of such contracts

with collective bargaining contracts existing (2893) prior to August 19, 1952.

(h) The methods of enforcing and policing such collective bargaining contracts prior to August 19, 1952, and since August 19, 1952.

(i) The Baronett back-to-work movement.

(j) The various criminal cases and/or other litigation against other persons not parties defendant in the above cases, but who are now or were previously identified with the International Union of Operating Engineers or any of its Locals.

(k) The attempts in 1951 to organize the operating engineers working on the Pennsylvania Turnpike, and the alleged activities of members of the Pittsburgh Local No. 66 in connection therewith.

This motion to strike from the record the testimony and evidence above referred to is based upon the ground that the same is irrelevant and immaterial to the issues involved in the above-entitled actions.

THE COURT: Your motion is denied, with an exception.

MR. O'BRIEN: In Underwood v. William E. Maloney, etc., Civil Action 14398, the defendant moves the Court to dismiss this action on the ground that, upon the facts and the law, the plaintiff has shown no right to (2894) relief. This motion is made under Rule 41 (b) of the Federal Rules of Civil Procedure.

THE COURT: I will deny the motion, with an exception.

MR. O'BRIEN: In Dawson, et al., against Maloney and Wharton, etc., Civil Action No. 14547, the defendants make the same motion to dismiss this action under Rule 41(b), on the grounds that, upon the facts and the law, plaintiffs have shown no right to relief, and also for the failure of plaintiffs to comply with the order of this Court dated May 2, 1956, which order is of record, and I shall not repeat it here, although it is set forth in our written motion.

THE COURT: I will deny it at this time, and you have an exception.

MR. O'BRIEN: Thank you, sir.

* * * * * * * * *

(2860) (Exhibit P-121 admitted in evidence.)

Now, the next are the McDonald papers, and we can take those through 170. That is one to which I will take a blanket offer.

MR. FREEDMAN: Well, I move the admission of all the McDonald reports, sir.

MR. WOLFE: They are all objected to, if Your Honor please, on the ground, in the first place, that they are irrelevant and immaterial to the issues of the case, and, in the second place, on the ground that most of the contents of the letters are hearsay.

THE COURT: I will overrule the objection. They may be admitted.

(Exhibits P-122 to P-170 inclusive admitted in evidence.)

MR. FREEDMAN: I may say, sir, that interspersed with

these there are a few other documents which are not from Mr. McDonald.

THE COURT: I understood that. They have bearing on matters contained in the McDonald reports, though.

(2861) MR. FREEDMAN: Yes, sir.

THE COURT: P-171 is a group of telegrams, May of 1951, from employers to individual members of the union to return to work.

MR. FREEDMAN: Yes, sir, Your Honor.

MR. WOLFE: They are all objected to as irrelevant to the issues.

THE COURT: All right, I will still admit them.

(Exhibits P-171-1 to P-171-24 admitted in evidence.)

* * * * * * * * *

(2865) Now, is there any objection as to any particular document from 180 to 193A?

MR. O'BRIEN: I think that Plaintiffs' Exhibit 186 and Plaintiffs' Exhibits 190 and 190A fall in (2866) a different category. They are letters from Carter to Mr. Maloney and from Carter to Mr. Hill, but I don't see any objection to P-186 and 190.

THE COURT: Then you don't object to any of them?

MR. WOLFE: May we have just a moment to consider that?

THE COURT: All right.

MR. WOLFE: If Your Honor please, we have no objection to P-186 and to P-190 and P-190A. We do object on the ground of relevancy to Exhibits P-180, P-181, 182, 183, 184, 185, 187, 188, 189, 191, 192, and 193.

THE COURT: Objections overruled. They are admitted.

(Exhibits P-180 to P-193A inclusive admitted in evidence.)

MR. WOLFE: I also object to the sub-number A of each of those.

THE COURT: The objection is overruled.

* * * * * * * * * *

(3439) MR. O'BRIEN: My records indicate that the plaintiffs' exhibits up to and including 193-A have been (3440) offered, and that last offer was at page 2866 of the record.

THE COURT: I would say then, in view of my statement made at that time that I intended to admit the excerpts from the Feinsinger report, that would take us through 194.

MR. FREEDMAN: Yes, sir.

THE COURT: That would be over the objection, of course, of the defendants.

MR. O'BRIEN: Yes, sir.

* * * * * * * * *

(3446) MR. FREEDMAN: I offer in evidence P-208, which is a letter from Captain James H. Farley, of the Department of Police, Atlantic City, New Jersey, dated March 19, 1948.

MR. O'BRIEN: Objected to.

THE COURT: I will overrule the objection.

(Exhibit P-208 admitted in evidence.)

MR. FREEDMAN: I offer in evidence P-209, which is a letter dated April 14, 1952, from David Williams to James L. McDevitt.

MR. O'BRIEN: Objected to.

THE COURT: I will sustain the objection to P-209. I don't think it has any bearing.

(Exhibit P-209 excluded.)

* * * * * * * * *

Exhibit D-11

EXHIBIT D-11.

MINUTES OF THE REGULAR MEETING OF THE EXECUTIVE BOARD OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 542, 542A, 542B AND 542C HELD ON MONDAY EVENING, AUGUST 4, 1952, IN THE BROADWOOD HOTEL, PHILADELPHIA

The meeting was called to order at 8:20 P. M. with President R. J. Underwood presiding.

Upon roll call the following members were recorded as being present: Brothers Charles Denoncour, Nathan Unruh, Homer Dawson, Edward Lewis, Peter S. Pantaleo, M. F. Rudden, Michael Howlett, Vernon Brightbill, Wm. Pacey, Colombo Acchione, Robert Walsh, M. F. Mogan, Joseph McCormick, Joseph Ungaro, George Gaull, Sr., Joseph Devlin, Jerry Leone and International Vice President, John J. McDonald.

In the absence of Recording Secretary Otto Weidman, Brother H. W. Lavery was appointed Recording Secretary pro tem.

NEW BUSINESS

William Hogan appeared voluntarily before the Board to report on a meeting which he attended, held on Sunday, July 27 at the home of James Baronett, 421 Martin Street, Philadelphia. Brother Hogan reported that approximately 35 people attended this meeting and that Baronett announced the receipt of a Charter from the Confederated Union of America.

He further reported that Brothers Clyde Pickering and P. Bozzelli were extremely active in this movement to

disrupt the Local Union while our strike was in progress against the Contractor Associations. He also stated that a petition was circulated among those present which some signed. He was unable to determine whether those present at this meeting were members of Local Union 542, since they were unknown to him.

Following a discussion of this situation, President Underwood advised the Board that charges were being processed against Baronett and others as had been directed.

Brother Michael Howlett suggested that the names of members who had crossed picket lines be posted in the Day Room and in the Union Office.

As the result of a request by Brother Joseph DiGerolamo to be heard by the Board in connection with the fine and suspension previously imposed on Brother DiGerolamo, the Board then heard his plea to have the fine and suspension removed. Since he could offer no valid reason for changing the action of the Board in his case, it was recommended that the fine and suspension previously imposed remain undisturbed.

Brother Paul Thomas who had been notified to appear at this meeting, was then heard by the Board. Brother Thomas was charged with reporting for employment to John Meehan and Son while a strike was in progress against that Company. He admitted that he had reported to the Yard but only for the purpose of visiting other employees and that he was under doctor's care at the time and denied that he had performed any work. He stated that he was still receiving medical treatment for a serious disability. The Board recommended that this matter be held over pending further investigation.

COMMUNICATIONS

Communication from the Harrisburg Building Trades Council concerning the current wage rates was received and filed.

Exhibit D-11

Action on a request from the Salvation Army in the Harrisburg area for a donation was postponed pending an investigation by Brother Brightbill to determine to what extent other Building Trades in the Harrisburg area were complying with this request.

A request was received from the Pennsylvania Association for the Blind for a donation. The Board recommended that our Local Union donate the same amount as was donated last year if such a donation was made.

A card was received from the American Cancer Society acknowledging our Local Union's recent donation.

Letter was received from St. Luke's & Children's Medical Center acknowledging with thanks our Local Union's recent donation.

Report was made by President Underwood regarding his meetings in Chicago on July 27, 28, 29 and 30 with General President Maloney, Wm. Carter and Harry Halloran. He informed the Board that at the end of the final meeting at Chicago on Wednesday, July 30, General President Maloney advised the parties to return to Philadelphia and negotiate a settlement of their differences after expressing the opinion that some agreement must be reached concerning the transfer of the Welfare Fund before any final agreement could be reached.

During the meetings in Chicago, Harry Halloran had insisted on changes, beneficial to the Contractors, in our basic independent agreement. President Underwood reported that upon his return to Philadelphia Thursday, July 31 a call was received from General President Maloney suggesting the terms of a settlement: The terms suggested at that time were:

> "Acceptance by the Contractor Associations of the independent contract as currently in effect and unconditional transfer of the monies in the old Welfare Fund to the new Welfare Fund."

Following this the parties were then to discuss the additional demands of the Union and to consider the arbitration

of some of the more difficult issues. This was agreed to and as a result, a meeting was held with the Contractors' Representatives on Friday, August 1 at 3:30 P. M. at the Broadwood Hotel. The Employer Representatives disagreed with this suggestion as a basis for discussion and the meeting lasted only about 20 minutes with the understanding that both parties would talk to President Maloney regarding this situation.

This was discussed with President Maloney over the telephone following this meeting and President Maloney suggested that he again talk to the Contractors' Representatives and call our Union on Saturday, August 2. No further word was received from President Maloney until Monday, August 4, when during a telephone conversation, President Maloney advised President Underwood that the Local Union should accept the proposal which provided for arbitration of certain important items already contained in the independent contract.

President Underwood advised President Maloney that this proposal would be submitted to the Executive Board and the membership of the Local Union but that President Underwood could not recommend his suggestion as a basis for settlement. President Maloney then stated that if the Local Union refused to accept his recommendation, a meeting of the General Executive Board would be called for the purpose of determining what further action should be taken by the International Union. President Maloney requested that he be called on Tuesday, August 5 and advised as to the position of the Union regarding his recommendation.

The recommendation of President Maloney was fully discussed by the Executive Board following which motion was made by Brother Howlett, duly seconded by Brother Acchione that the General President's recommendation for a contract settlement between our Local Union and the Contractor Associations be declined by the membership. Motion was adopted unanimously.

Following a further discussion of this matter, a motion

was made by Brother Ungaro, seconded by Brother Lewis that in the event any action is taken against our Local Union by the International Union or others, our Counsel be instructed to take such measures as may be necessary to protect the interests of our membership. Motion adopted unanimously.

President Underwood reported that the Secretary to the Board of Trustees of the new Welfare Program had assumed his duties on July 28 and it was expected that payments would be made to eligible employees from the new fund in the very near future.

Brother Denoncour raised a question concerning the present status of Wm. Carter with respect to our current negotiations and was advised by President Underwood that it was most unlikely that Carter would ever again inject himself into the affairs of our Local Union.

ADJOURNMENT

There being no further business before the Board for discussion, the meeting adjourned at 10:50 P. M.

HARRY W. LAVERY
Recording Secretary pro-tem.

EXHIBIT D-12.

MINUTES OF THE SPECIAL MEETING OF THE EXECUTIVE BOARD OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 542, 542A, 542B AND 542C HELD ON TUESDAY, AUGUST 12, 1952 AT 8 A. M. IN THE BROADWOOD HOTEL, BROAD AND WOOD STREETS, PHILADELPHIA.

The meeting was called to order at 8 A. M. with President R. J. Underwood presiding.

Exhibit D-12

Upon roll call, the following officers were recorded as being present: Brothers Pacey, Brightbill, Devlin, Gaull, Sr., Lewis, Walsh, Ungaro, Leone, Smith, Pantaleo, Unruh, Jr., Lavery, McCormick, Dawson, Acchione, Howlett and Rudden.

In the absence of Recording Secretary Otto Weidman, Brother H. W. Lavery was appointed Recording Secretary pro tem.

President Underwood announced that the purpose of this meeting was to consider the letter received from General President Maloney on August 11, 1952 and bearing the same date which contained an order directing the membership of our Union to return to all jobs of the three Contractor Associations without a contract. Recent incidents occurring prior to the issuance of this letter by the General President were reviewed briefly by President Underwood following which the letter was read to the Board. The Board then entered into a discussion of its contents.

During this discussion, it was pointed out by President Underwood that President Maloney had mentioned on a number of occasions that J. Howard McGrath was persistent in his demands that our Local Union adopt the contract suggested by the Employer Associations.

The action of the Philadelphia Building Trades Council and its officers and of Harry Halloran was also thoroughly discussed.

President Underwood pointed out the impossibility of complying with the order contained in President Maloney's letter delivered by Hunter Wharton, even if the Executive Board was agreeable to comply. It was noted that only twenty-four hours were permitted the officers of the Union to call a meeting of the membership to pass on the General President's order.

Following a conclusion by the Board members that they could not recommend to the membership the contract less favorable than the one now existing even though the less favorable contract was advocated by General President Maloney, the Board adopted the following resolution:

Exhibit D-18

"That the Business Manager proceed forthwith with any and all legal action necessary to restrain anyone from enforcing the less favorable contract on the membership of our Local Union, and that our Local Union decline to comply with the order of General President Maloney as set forth in his letter of August 11, 1952."

ADJOURNMENT

There being no further business, the meeting adjourned at 9:40 A. M.

.....
Recording Secretary, pro-tem

EXHIBIT D-18.

February 25, 1953

Mr. Otto Weidman
Rec. Corres. Sec., Local #542
121 N. Broad Street
Philadelphia, Pennsylvania

Dear Sir and Brother:

There is enclosed herewith a copy of the action of the General Executive Board in connection with Case No. 2 regarding the pending appeal to lift International Supervision over Local Union #542 as the same appears from the records of the meeting of the Board at Miami, Florida, February 10, 1953.

Please see that this decision continuing the appeal is posted on the Bulletin Board of Local Union #542.

With kindest regards, I am

Fraternally yours
CHARLES B. GRAMLING
GENERAL SECRETARY-TREASURER

CBG:hm
Enc.

Exhibit D-21

EXHIBIT D-21.

We the undersigned being members in good standing in LOCAL #542 of the International Union of Operating Engineers, hereby certify that on the 28th day of June, 1952. at the home of JAMES V. BARONETT. 421 Martin St.. Phila., 28, Pa, WE, acting on behalf of the membership of LOCAL #542 counted and tabulated the result of a secret ballot, conducted by JAMES V. BARONETT; to determine if the membership of LOCAL #542 desired to return to work or remain on STRIKE. The result of our tabulation of said ballot is:

TO:	Remain on Strike	25
	Return to Work	1048
	VOTES INVALID	18

James V Baronett
Frank Pitetti
Peter R. Bozzelli

Thomas Gass
Dante Stabilito
Clyde Pickering
John Lee
Harold J. Slater
Harry C. Wurst

Received 7/10/52

Exhibit D-45

EXHIBIT D-45.

SAFETY

The Employer assumes full responsibility to furnish and maintain all mechanical equipment, and safe operating practices and conditions in accordance with Paragraph 5-A of the "Rider to agreement between International Union of Operating Engineers, Local 542, 542-A and 542-B and Employers" appended hereto, and in connection therewith it is agreed:

Frequent inspections at reasonable intervals shall be made of all such equipment, and safety practices shall be adopted with the understanding that the following shall be observed and enforced in addition to other inspections required:

(1) Check all rod connections between operating levers and clutches, swing and travel locking devices, brake pedals and bands, and other places where their use is required.

(2) All machinery guards must be in their proper places and secured.

(3) Inspect boom and hoist wire ropes for excessive wear or damage. Check boom point and other sheaves for excessive wear, cracks, and broken or damaged sheave flanges. Also inspect boom point fair-leads. Boom must be in a lowered position while making this inspection. Be guided by following recommendations regarding safety of wire ropes and replace wire rope if:
(a) Seven wires are broken in any one rope-lay, or,
(b) Outer wires are worn more than 35% of their original diameter, or,

(c) Outer wires are worn 10% and five (5) wires are broken in any one rope-lay, or,

(d) Outer wires are worn 20% and four (4) wires are broken in any one rope-lay, or,

(e) Outer wires are worn 30% and three (3) wires are broken in any one rope-lay.

(4) Before starting regular hoisting operation, raise and lower a load a few times to test clutches and brakes. Test travel and swing locking devices.

(5) Never permit any employee to lubricate machine while in operation.

(6) Never permit loads of any nature to be swung over the heads of other workmen, and, hoist, lower, and swing crane and derrick loads only on signal from an experienced and authorized signalman, and then only if signals can be clearly seen and are thoroughly understood by operator.

(7) When a machine is operating in the vicinity of other workmen, be sure an experienced signalman is stationed at the rear of machine to warn workmen and trucks away from path of machine's swing. Never allow machine to move backward without an all clear signal from this signalman.

(8) No one is to be permitted to ride on hooks or loads.

(9) Before the repairing, adjusting, or oiling of machine, the main control or master clutch must be locked in the off position. If controls cannot be effectively locked, someone must be stationed nearby such controls to guard them.

(10) No attempt shall be made to hoist loads if ground conditions or other supporting structures are not suf-

ficiently stable to safely carry the weight of machine and load.

(11) Any circumstance or condition of a hazardous nature in the vicinity of a machine must be immediately corrected.

(12) Caterpillar machines are to be equipped with a horn or other warning device capable of being heard by workmen within the vicinity of such machines.

(13) No material shall be loaded into trucks until the driver has dismounted and is safely in the clear.

(14) Equipment shall not be operated during inclement weather unless brakes and clutches are fully protected. Water on brake and clutch bands renders control of machine difficult if not impossible.

(15) Machines shall not be operated when weather, or other conditions substantially impair the operator's visibility. Remember—cranes, shovels, derricks, and hoists handle hundreds of tons of material during a normal working day and workmen in the vicinity of machines rely upon the safe operation and condition of such machines to protect them against injury of loss of life resulting from falling material or unexpected movements of machines or loads.

(16) Machines must be equipped with a fire extinguisher filled and ready for instant use.

(17) Bulldozers, rollers, carryalls, scrapers or similar equipment must not be moved without first ascertaining that other workmen are in the clear.

(18) Machines must not be backed to make a coupling unless signaled by an experienced signalman.

(19) Fueling, adjustments, or repairs to any equipment shall not be made while engine is running.

(20) When repairs or adjustments are being made, all parts of machine must be secured against sudden and unexpected movement.

(21) Unauthorized persons shall not be permitted to ride on or tamper with machines.

(22) Wire ropes and sheaves on all excavating equipment shall be inspected daily.

(23) Passengers shall not be allowed on building material hoists. Material hoists shall not be operated without adequate signaling devices and arrangements and all wire ropes must be inspected daily.

(24) Tools of other workmen shall not be permitted in machine during operation.

(25) Gasoline, fuel oil, or other inflamable solution shall not be used for cleaning purposes. They may cause skin infections and they create a fire hazard.

(26) All injuries must be treated and cared for promptly and competent medical attention provided for care and treatment of such injuries.

(27) Boom or other part of machine must not be allowed to come within less than 10 feet of any electric power line.

(28) State Laws require that building hoists be inspected each time they are installed on any operation and that a "Certificate of Operation", signed by an authorized

inspector, be displayed on or near such hoist. This must be complied with.

The provisions of this Safety Code shall not be construed to limit the duties of the Employers to conform with other safety practices customary in the industry or advocated by any responsible person or agency.

EXHIBIT D-46.

RIDER TO AGREEMENT EFFECTIVE MAY 1, 1952 TO APRIL 30, 1953 BETWEEN INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL UNIONS 542, 542A AND 542B AND EMPLOYER CONTRACTORS

1. The Employer agrees, in addition to the undertakings set forth in the agreement to which this is a Rider, to pay all employees, members of the International Union of Operating Engineers Local Unions 542, 542a and 542b, through the said Union, retroactively for the period from May 1, 1951 to April 30, 1952, the sum of twenty-five (25¢) cents per hour for each hour during which said employees were entitled to receive compensation under the terms of the written contract between International Union of Operating Engineers Local Unions 542, 542a and 542b and the Employer, effective during the said period, in the Philadelphia and adjacent area.

2. Employers are to create and support a pension and retirement plan which will provide a monthly benefit of One Hundred ($100.00) Dollars for employees who had been engaged in the industry for twenty (20) years or more.

3. Wage rates of all engineers, oilers and firemen to be increased five (5%) percent.

Exhibit D-46

4. The Employer shall be bound by and act in accordance with the provisions of the Safety Code which is appended hereto. For any infraction or violation of the said Safety Code, the Employer shall pay into a fund, to be designated by the Union, the sum of Five Hundred ($500.00) Dollars for each such infraction or violation.

5. The Employer shall not require any employee to operate any equipment owned by any contractor, employer or other person with whom the Union may have a dispute, nor shall the Employer require any employee to work on any job where such equipment is in use or operation.

6. No employee shall be discharged or otherwise prejudiced because of any refusal to operate equipment regarded as in an unsafe or dangerous condition, or mechanically unsafe, nor for operating safe equipment under dangerous circumstances.

7. An oiler or fireman must be employed in the operation of concrete mixers under one-half yard capacity.

8. An engineer must operate all mixers greater than one-half yard capacity.

9. When two (2) or more concrete vibrators or portable generator machines are used on any job by an employer, an engineer shall be required to maintain and/or operate such machines.

10. An oiler or fireman shall be required on equipment in addition to that specified in the contract when deemed necessary by the Union.

11. When five (5) or more engineers are employed by any Employer on any one project, a master mechanic shall be employed.

Exhibit D-46

12. Add following holidays:
Washington' Birthday
Armistice Day
Presidential Election Day

13. All new mechanical equipment to be operated by engineers.

14. For any infraction or violation of any of the provisions of the agreement, the Employer shall pay into a fund, to be designated by the Union, the sum of Five Hundred ($500.00) Dollars for each such infraction or violation. The payment of such damages shall not be in limitation of the right to strike or any other rights and privileges on the part of the Union.

15. Employer shall be required to furnish adequate sanitary toilet facilities reasonably accessible to all employees, and to be approved by a Federal or State Public Health Service. Employer to provide and make readily available at all times cool drinking water in a sanitary container and dispensed in individual drinking cups.

16. Employer agrees to be bound by any trust agreement for the Welfare Program which may be approved by the Trustees heretofore selected by the independent contractors.

17. The contract is to be signed by each and every contractor and only by the designated officials of the Union; in the event any new contractor becomes affiliated with any associations and desires the benefits of the contract, the Union shall have the right to accept of reject any such new contractor from the benefits under the contract; such new contractor shall not become a party to the contract without the consent of the Union.

Exhibit D-46

18. The Associations who are bargaining for the individual contractors shall be responsible for the acts of individual members and all members of the Associations agree to become responsible for any and all damages which they themselves cause or for which the Associations may become responsible.

19. (a) Any employee covered by the terms of this agreement who shall suffer personal injury resulting in whole or in part from the negligence of the Employer or the Employer's officers, agents or employees, or by reason of any defective, unfit, unsafe, unsuitable or insufficiency of any appliances or equipment, or because of the failure to provide and maintain a safe place to work, or for any violation of the Safety Code hereto appended, may maintain an action for damages against the said Employer or Employers, in any court of competent jurisdiction; and, in the case of death as a result of any such personal injury, the right of action shall survive to the estate of the deceased employee, and the personal representative of such deceased employee may maintain a right of action for damages against the Employer in behalf of the Estate for such damages as the deceased employee may have recovered had he lived, and in behalf of the surviving spouse, children, parents and dependent next-of-kin of such employee;

(b) In all such actions for personal injury or death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished in proportion to the amount of negligence attributable to such employee, provided, however, that no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where such injury or death is due in whole or in part to any defective, unfit, unsafe, unsuitable appliances and equipment, or to the failure to provide and maintain a safe place to work or to any violation of the Safety Code hereto appended.

Exhibit D-46

(c) In all such actions for personal injury or death, the employee shall not be held to have assumed the risks of his employment in any case where such injury or death resulted in whole or in part from the negligence of the Employer or the Employer's officers, agents and employees, or from any defective, unfit, unsafe, unsuitable appliances and equipment or from the failure to provide and maintain a safe place to work, or from any violation of the Safety Code hereto appended.

(d) Nothing in this article shall be held to limit or impair the rights of injured or killed employees under any statutes or laws of the United States or of any State.

The provisions of sections (a) (b) and (c) hereof, are cumulative and in addition to any rights which may arise for personal injury or death of any employee under the Workmen's Compensation laws.

(e) No action for damages shall be maintained under the provisions of this article unless commenced within three (3) years from the day the cause of action accrued.

INTERNATIONAL UNION OF
OPERATING ENGINEERS
Local 542, 542a, 542b
By .....
.....
Witness

Employer
By (SEAL)
.....
Address: .....
.....
Witness

Exhibit D-65

EXHIBIT D-65.

MINUTES OF THE GENERAL EXECUTIVE BOARD, JANUARY 22, 1954.

Session of Friday, January 22, 1954

The General Executive Board convened in executive session at 10:00 a. m., Friday, January 22, 1954, all members of the Board being present.

The minutes of the session of Thursday, January 21, 1954, were read and unanimously approved.

Case No. 12
In Re: Local Union No. 542, Philadelphia, Pa., Further Report of Interim Hearing Board

This matter came on for discussion upon a report of the Interim Hearing Board heretofore appointed, supplementary to its report previously filed in Case No. 23 of the General Executive Board meeting of July 30, 1953.

This current report of the Interim Hearing Board was read to the General Executive Board by the General Secretary-Treasurer, and is as follows:

Report of Interim Hearing Board in Re Local Union No. 542

Since the first partial report of the Interim Hearing Board was submitted, as referred to in Case No. 23 of the minutes of the General Executive Board of July 30, 1953, your Board has given further consideration to the problems before it connected with conditions existing in Local Union No. 542 and herewith report and recommend as follows:

Exhibit D-65

1. On the subject of the advisability of considering a division of the territorial jurisdiction of Local Union No. 542 and the issuance of separate additional charter or charters therefor, we recommend that further study of this question be undertaken by the General Executive Board and that the subject be continued on the Board's agenda. It appears that there are reasons for and against such division of territory, and while the proponents do not seem as actively interested in the proposal as formerly, we believe it is a matter warranting further study as internal conditions caused by pending litigation return to normalcy within the Local Union.

2. On the operation of internal clubs within the membership of Local Union No. 542, it appears that the conduct and operation of these clubs continues in flagrant violation of the policy and law of the International Union of Operating Engineers. The purpose of these cliques in raising funds to support litigation, creating dissension and fomenting rebellion again constitutional authority, is still being actively maintained and we recommend that the General Executive Board take such appropriate action under the constitution as may be needed to restore law and order.

3. In connection with our report on the administration of business in the Local Union No. 542 area we recommend to the General President that steps be taken to overhaul or renovate the Executive Board of Local Union No. 542 in a manner so as to fit it to function as a harmonious aid to the administration of business of the Local Union. It appears that the past composition of the Local Executive Board under the administration of Underwood merely presented a sounding board for his domination of the Local Union with faulty records of meetings, the minutes of which were deleted and rewritten from time to time. Since supervision, the presence of active litigants staying on the Board has caused dissension, promoted continued ill will and inter-

fered with the proper administration of business. We recommend that rebellious partisans, active litigants in pending lawsuits and their active supporters be omitted from the Local Executive Board; further, that the Board be reconstituted so that it can function as an aid to the business of the Local Union and not as a debating society to try the merits of lawsuits every time it meets. We believe such a change is necessary and in the best interests of the membership.

4. Referring to our previous recommendation on the subject of the formulation of By-Laws for Local Union No. 542, we again suggest the advisability of processing steps looking toward this objective.

We recommend that a By-Law committee of five parent body members be appointed which shall be authorized to sit as a By-Law convention, receive suggestions from members, formulate and recommend a code of By-Laws and submit such code to the membership by referendum.

In the hearings which we have had of the Interim Hearing Board at Wilkes-Barre, Reading, Harrisburg, Philadelphia and Wilmington, we have interviewed hundreds of members who have appeared before the Board. Many of these members appear to be exceptionally well qualified for work upon a By-Law committee and from our observation we are glad to submit the names of the following as being fitted by virtue of long membership, experience, unbiased character and familiarity with union problems in their areas.

1. Michael Howlett, Philadelphia.
2. Fred Engelhardt, Reading.
3. Robt. Murray, Delaware.
4. Bert Perry, Wilkes-Barre.
5. LaVerne Munn, Harrisburg.
6. Thomas Atkinson, Philadelphia.
7. Wm. Lebanon, Philadelphia.
8. Geo. Gaull, Philadelphia.

Exhibit D-67

9. Peter Pataleo, Philadelphia.
10. Edward Piscatelli, Philadelphia.
11. A. Smith, Philadelphia.
12. Wm. McAneny, Wilkes-Barre.
13. M. Rudden, Philadelphia.
14. Vernon Brightbill, Harrisburg.

Your Interim Hearing Board recommends the appointment of a By-Law committee from among the foregoing or others whom the General President may deem especially fitted for the task.

Respectfully submitted,

INTERIM HEARING BOARD,
Chairman.

At the conclusion of the reading of the report a general discussion ensued, following which, upon motion duly adopted, the report was made a part of the records of this session and ordered filed.

EXHIBIT D-67.

NEWSPAPER RELEASE ISSUED TO THE PRESS
TUESDAY, AUGUST 5, 1952.

The Building and Construction Trades Council at its meeting held on Friday, August 1st, took the following action in the interest of all parties affected and involved dealing with the Operating Engineers Union Local #542's inability to settle its long drawn out strike. It deems it necessary to take the following action as noted in the wire sent to Mr. Roy J. Underwood, Business Manager, Operating Engineers Union Local #542 and Mr. William E. Maloney, International President, International Union of Operating Engineers, that unless the request as noted in the wire is immediately carried out the Council will with the assistance of all

its affiliated local unions carry out the order which will affect all jobs on which members of the affiliated local unions are employed.

"Due to protracted strike by the Engineers which has caused 6500 members of the trades affiliated with the Building Trades Council, unemployment, and at last meeting has instructed the Executive Committee to notify Mr. Underwood and also President Maloney that unless something is done at once to bring about immediate settlement our members will not work on any project where Engineers are employed. We must insist on immediate action on this request otherwise Executive Committee of our Council will carry out orders of our Council."

Norman Blumberg
Secretary-Treasurer
Building and Construction Trades Council
of Philadelphia & Vicinity.

EXHIBIT P-23.

INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCALS 542, 542-A, 542-B, 542-C

(Seal)

Affiliated With The American Federation of Labor
and Building Trades Department
121 North Broad Street
Phone: Rittenhouse 6-7764
Philadelphia 7, Pa.

Roy J. Underwood
Business Manager

(Union Label)

November 25, 1949

Exhibit P-23

Mr. Wm. E. Maloney, General President
Int. Union of Operating Engineers
1003 K Street, N. W.
Washington 1, D. C.

Dear Sir and Brother:

The report you requested, during my visit to your office in connection with the turnpike extension dispute, has been delayed pending the outcome of our attempt to consummate an agreement covering "Highway Construction" with the contractors directly involved in the recent work stoppage on the turnpike.

As you know, the cooperation of other Local Unions of Operating Engineers, as directed by you, was chiefly responsible for the success of that first and highly important phase of our organizational campaign.

Immediately following the signing of the "Memorandum of Agreement" by the six (6) turnpike contractors, contracts were prepared and submitted to their representatives. Several discussions followed which resulted in complete agreement on the terms and wage rates of a formal contract applicable to "Highway Construction" performed within the twenty-five (25) eastern Pennsylvania Counties not presently under agreement. Copies of this contract have been sent to those employers for their signatures and a copy has also been mailed to your office.

A tremendous amount of attention had been focused on the recent turnpike dispute, and the intense interest of other upstate contractors, who for many years had operated on a non-union basis, has been evidenced by a request from a Contractors' Association in Harrisburg, Pa. to enter into negotiations with Local 542 for a contract covering the twenty-five counties previously referred to.

This is highly significant in view of the fact that requests made by us, to these same employers during the past eighteen (18) months, to negotiate an agreement have been completely ignored.

Exhibit P-23

John McDonald and I attended a meeting on Monday, November 21 and another on Wednesday, November 23, both at Harrisburg, Pa. with this Association for the purpose of setting up the necessary negotiating committees and to agree on methods of procedure. Actual negotiations are expected to begin on or about November 30, 1949.

During our visit to Harrisburg on Wednesday, November 23, word was received that C. J. Langanfelter of Baltimore, Md. is now ready to discuss a settlement of his differences with Local 542. As you may recall, this contractor is engaged in constructing two (2) sections of the turnpike and has been unusually adamant in his refusal to talk to us in spite of the fact that his projects have been picketed constantly by the engineers during the past three (3) weeks. Unfortunately, practically no cooperation or assistance has been received by us from other crafts involved, and union teamsters out of Reading, Pa. have continually crossed our picket lines with ready-mixed concrete and other materials consigned to C. J. Langanfelter. They have finally agreed to discontinue the practice but the fact remains that considerable harm has already been done and settlement of this dispute has been long and unnecessarily delayed by their actions.

Twelve (12) contracts with individual emp. yers have been signed during the past three (3) weeks. These, of course, are in addition to the six (6) turnpike contractors and there are a number of indications that many others will come into the fold in the immediate future.

Full scale operations are to begin immediately in Pennsylvania embracing a tremendous highway construction program with a completion date tentatively set for 1953. In view of this we are not underestimating the importance of vigorously prosecuting a campaign to insure the application of Union wage rates and conditions to all of this work.

The foregoing is intended to be a brief resume of local happenings relative to Highway Construction since my discussion with you. I shall be glad to furnish more detailed information if you so desire.

Exhibit P-48

I again take the opportunity to express my appreciation to you for the invaluable assistance rendered during the trying period experienced by us in connection with the recent turnpike dispute.

With kindest regards, I am

Fraternally yours,

ROY J. UNDERWOOD
President and
Business Manager

RJU:f
oeiu-14

EXHIBIT P-48.

(Seal)

INTERNATIONAL UNION OF OPERATING ENGINEERS
Affiliated With The American Federation of Labor

(Union Label)

Telephone National 9265
Carpenters' Bldg., 1003 K St., N.W.
Washington 1, D. C.

Office of the General President

August 11, 1952

OFFICERS AND MEMBERS OF LOCAL UNION #542
and BRANCHES.

Attention Mr. Roy J. Underwood
GENERAL PRESIDENT'S INSTRUCTION
TERMINATING STRIKE.

Dear Sirs and Brothers:

The public interest together with the best interests of the rank and file of Local Union #542 and its Branches and of

Exhibit P-48

the International Union of which it is an important part recognizes that prompt action be taken to return its membership, which has been out of work since May 1, 1952, back to their jobs.

As a result of the conference between the parties at my Chicago office and from other information before me it is evident that the few differences between Local Union #542 and the Employer Contractors Associations have now been reduced to a point where facilities for agreement are available and can be used, making it unnecessary and inadvisable to further continue this strike.

Now for the first time in the history of this organization we have been officially notified that the 6500 members of the Building and Construction Trades Council of Philadelphia, who have been thrown out of work since May 1 as a result of your strike, have taken drastic action, refusing to work on any job with any operating engineer. These men together with the members of your Local Union have been walking the streets for over 13 weeks and now the majority of them want this strike ended and to return to work. There is no justification for the continuance of this strike when the means of settlement upon the narrow issues discussed are available.

ORDER

As General President of the International Union of Operating Engineers I hereby order all members of Local Union #542 and its Branches to promptly return to their work forthwith.

I further direct and instruct Roy Underwood as President and Business Manager of Local Union #542 to immediately end the current strike and to promptly issue notice to the membership thereof within twenty-four hours from the receipt of this letter, and I further request that he immediately advise my office on receipt of this Order of his intention to cooperate.

Exhibit P-52

I further direct and instruct the officers, committees and members of Local Union #542 and its Branches to comply with these Orders and to cooperate in carrying out the intent and purpose thereof.

I further direct and instruct Local Union #542 to promptly enter into and pursue negotiations with the Employer Contractor Associations, per the substance of my telegram to Roy Underwood of August 5, 1952 and upon the basis of the understanding informally reached at the Chicago conference between the parties.

You will take notice of the foregoing Order issued by me as General President under authority conferred by the Constitution of the International Union of Operating Engineers, and govern yourselves accordingly.

Fraternally yours,
INTERNATIONAL UNION OF OPERATING ENGINEERS
By WM. E. MALONEY
Wm. E. Maloney, General President

WEM:MEB

EXHIBIT P-52

(Seal)

INTERNATIONAL UNION OF OPERATING ENGINEERS
Affiliated With The American Federation of Labor

(Union Label)

Telephone National 9265
Carpenters' Bldg., 1003 K St., N.W.
Washington 1, D. C.

Office of the General President

TO THE OFFICERS AND MEMBERS OF
LOCAL UNION #542 and BRANCHES

Exhibit P-52

Attention: Roy J. Underwood, President and Business Manager and to All Those Whom This Letter May Concern.

Greetings:

"General President's Order Invoking International Supervision over Local Union #542 and Branches."

From reports of conditions existing in the territory of Local Union #542 coming to my attention it is apparent that emergency action by your General President is necessary and in my opinion the best interests of the membership of Local Union #542 and of the International Union, as well as the Public Interest, require that such emergency action be immediately asserted and that International Supervision over the affairs of your Local Union be temporarily invoked. I find that an emergency exists and that this relief is necessary.

An irregular strike has been declared and maintained by the officers of Local Union #542 which has thrown its members out of work since May 1, 1952. The continuance of this strike has long been disapproved by the Building Trades Council of Philadelphia whose 6500 members have been walking the streets unable to work because of your action. We now witness action taken by the Building Trades condemning the continuance of your strike and ordering their membership of 6500 to refuse to work upon any job upon which any operating engineer is employed.

Strenuous efforts have been exerted by me to assist you in settling your differences with the Employer Contractor Association. At my Chicago conference between the parties the issues were simplified and the means agreed upon to settle them but on your return to Philadelphia you took a different attitude. I wired you on August 5, 1952 advice on settlement which has been ignored. On August 11, 1952 I ordered the members back to work and instructed you to end the strike and issue notice thereof to the membership

Exhibit P-52

within twenty-four hours and to advise me of your cooperation. These instructions delivered to you at 3:00 P. M. August 11, 1952 have not been followed. The means for the peaceful negotiation and settlement of your differences with the Employer Contractor Associations have been available to you but ignored. Your determination to keep members walking the streets is unjustified. I believe that a majority of the membership desire that the strike end—that they be permitted to return to work and they desire that Local Union #542 negotiate and settle its differences without personal animosities at the conference table.

The Operating Engineers of Philadelphia have lost and are continuing to lose public good will and prestige through the conduct of this strike, resulting in tremendous inconvenience to the public and halting for many months the work upon millions and millions of dollars of Public Works over a wide area. The Governor of Pennsylvania has personally appealed for resumption of work on public projects, calling attention to the many strikes instituted by you in the past few years on public projects. Dissension within the Local Union appears to be rampant—violence is reported to occur at meetings—members seek to withdraw and secure a separate charter and supervision is begged for by many. These are but a few of the conditions which appear to show that the administration of Local Union #542 has broken down and is at fault, and convince me that the interests of the membership should not be jeopardized by further continuance of these conditions.

Order invoking International Supervision

In accordance with the power invested in me as General President by the Constitution of the International Union of Operating Engineers I hereby place Local Union #542, its branches, officers, members, business and affairs under International Supervision effective forthwith pending a hearing before me as hereinafter designated.

Exhibit P-52

I further appoint Brother Hunter Wharton as my deputy and International Supervisor over Local Union #542 and its Branches and I direct him to administer the business and affairs thereof, and to conserve its assets to the best of his knowledge and ability and as a trust solely for the benefit of the membership to the end that the rights of members will be protected; their property safeguarded; their affairs administered with fairness and in a business-like manner, and that the Constitution, laws, customs, Ritual and Authority be recognized and enforced by the membership. He shall appoint, subject to my approval, such temporary assistants and officers pro tem. as may be deemed necessary for the conduct of business of the Local.

The present officers of Local Union #542 are instructed not to interfere in the administration of the business of Local Union #542 by Supervisor Wharton and are further instructed to turn over to the Local Union any property belonging to it which they are withholding.

I direct that all Banks and Depositories of Local Union #542, its Branches, officers and committees, give full recognition to my Deputy, Hunter Wharton, as International Supervisor in the premises and to honor the official character of his appointment.

I direct International Supervisor Wharton to keep full records, to cause regular audits to be made by Certified Public Accountants, to make true accounting of his trust and be strictly accountable for his stewardship thereof.

During this emergency under International Supervision the earned good standing of the members shall in no way be adversely affected, nor shall the rights of members in good standing to work be interfered with, and the Charter of Local Union #542 shall remain in force under the protection of Constitutional Supervision.

Notice of Hearing

This order invoking International Supervision over Local Union #542 and Branches and appointing Hunter Wharton

as International Supervisor in charge thereof shall continue temporarily subject to a hearing at 1003 K Street, N.W., Washington, D. C., at 1:00 P. M. August 26, 1952, at which time and place any and all interested parties may appear and show cause why these orders should not be continued until further order or modified.

Notice of such hearing is hereby given to all interested parties. Please take notice thereof and govern yourselves accordingly. Issued under authority of the Constitution of the International Union of Operating Engineers at 11:00 A. M. this 19th day of August, 1952.

INTERNATIONAL UNION OF OPERATING ENGINEERS
By WM. E. MALONEY
Wm. E. Maloney, General President

EXHIBIT P-53.

To the General Executive Board,
International Union of Operating Engineers,
1003 K Street, N. W.,
Washington, D. C.

In re: Local Union 542, International Union of Operating Engineers, Philadelphia, Pa.

Dear Sirs and Brothers:

An important matter which I desire to bring to the attention of the General Executive Board has to do with the filing of a very serious lawsuit by Brother Roy J. Under-

Exhibit P-53

wood and his attorney against the International, its General President and General Officers.

Charges in lawsuit alleged misconduct on the part of the General Officers, alleged improper and illegal conspiracy with third persons, alleged improper relations between J. Howard McGrath and the General President, alleged violation of the Clayton and Sherman Acts through a conspiracy by the General President to defraud the members.

The lawsuit presents an outstanding example of a document which defames our General Officers. Here was a triple violation of the Constitution of our International Union by Brother Underwood, who as President and Business Manager of Local Union 542 was supposed to know the rules of the organization, and these violations were:

1. The deliberate defying of the Constitutional authority of the General President.

2. Circumventing the Constitution by filing a lawsuit when no complaint or charge had been filed within the International Union.

3. Using the lawsuit as a means to charge the General President and his fellow officers with the most reprehensible, derogatory and illegal conduct and then when full publicity had been attained in the lawsuit, to dismiss it with prejudice showing the utter baselessness of the allegations.

I charge that Brother Roy Underwood, in assisting in the preparation of this lawsuit, in verifying and filing it in the court and thereby causing it to become public property with notices in the newspapers, has published literature of a defamatory nature against our General Officers contrary to the provisions of Article XVI, Section 1, of the Constitution of the International Union of Operating Engineers and that this is a matter which concerns every single member of

Exhibit P-53

our organization and is so serious as to deserve the attention of the General Executive Board of the International Union of Operating Engineers to whom this subject is respectfully directed.

Fraternally yours,

WILLIAM E. CARTER
William E. Carter,
Hearing Officer.

August 30, 1952

Exhibit P-58

EXHIBIT P-58.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

International Union of Operating Engineers, Locals 542, 542A, 542B and 542C and Roy J. Underwood, President and Business Manager of the said Locals, in his own behalf and in behalf of all of the Officers and Members of the aforementioned Local Unions

v.

William E. Maloney, General President of the International Union of Operating Engineers

and

The International Union of Operating Engineers and all of the Officers and Representatives thereof

and

J. Howard McGrath

and

Harry R. Halloran

and

General Building Contractors' Association

and

Pennsylvania Excavators' Associations

and

Contractors' Association of Philadelphia

and

Civil Action
No. 14071

Exhibit P-58

Norman Blumberg
Joseph Burke
James Locklin
James McDevitt and
John Cregan, Individually and as Officers and Representatives of the Building and Construction Trades Council of Philadelphia and Vicinity and its Affiliates

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COMPLAINT.

1. Defendant, International Union of Operating Engineers, hereinafter referred to as the "International Union", is a labor union engaged in the building and construction trades industry in interstate commerce, affiliated with the American Federation of Labor.

2. Plaintiff, Local Union 542, hereinafter referred to as "Local 542", is a labor union engaged in the building and construction trades industry in interstate commerce under a charter granted by the International Union on December 31, 1938, giving the said local union exclusive jurisdiction within the territory of the eastern half of Pennsylvania and the State of Delaware. The membership of said local unions is composed of engineers, oilers and firemen, hereinafter referred to as "Engineers".

3. Local Unions 542A, 542B and 542C are branches of and operating under the control of Local 542 in the building and construction trades industry in interstate commerce under charters issued by the International Union.

4. Roy J. Underwood is a citizen of the Commonwealth of Pennsylvania and is President and Business Manager of

plaintiff Local Unions 542, 542A, 542B and 542C. Said plaintiff brings this action in his own behalf and as representative of the officers and individual members of the said Local Unions constituting approximately 4000 members.

5. Defendant William E. Maloney is a citizen of the State of Illinois and is General President of the International Union of Operating Engineers.

6. Defendant J. Howard McGrath is a citizen of the State of Rhode Island.

7. Defendant Harry R. Halloran is a contractor, engaged in the building and construction industry in interstate commerce and at all times hereinafter mentioned, acted in his own behalf and as duly authorized agent for and on behalf of the defendants General Building Contractors' Association, Pennsylvania Excavators' Association and Contractors' Association of Philadelphia.

8. Defendant Norman Blumberg is the Secretary-Treasurer of the defendant Building and Construction Trades Council of Philadelphia and Vicinity and at all times mentioned hereinafter, acted as the duly authorized agent for and on behalf of the said council and its affiliates.

9. Defendants Joseph Burke, James Locklin, James McDevitt and John Cregan, at all times hereinafter mentioned, were officers of the Building and Construction Trades Council of Philadelphia acting in their own behalf and as duly authorized agents for and on behalf of the said council and its affiliates.

10. General Building Contractors' Association and the Contractors' Association of Philadelphia are corporations acting in their own behalf and as the duly authorized agents for and on behalf of various contractors engaged in the build-

ing and construction trades industry in interstate commerce.

11. Pennsylvania Excavators' Association is an unincorporated association acting in its own behalf and as the duly authorized agent for and on behalf of various contractors engaged in the building and construction industry in interstate commerce.

12. After plaintiff Local 542 was granted its charter on December 31, 1938, the International Union exerted control and supervision over the said local union until March 29, 1948. During the aforementioned period, Local 542 was deprived of the right to operate as an autonomous union and was not afforded the right to elect its own officers and conduct its own affairs.

13. In 1947, because of certain corrupt practices resulting from the supervision by the International Union in the management of plaintiff Local 542, the members of the said Local petitioned the Court of Common Pleas of Philadelphia County to restrain supervisory control by the International Union and to obtain local autonomy. An election of the local membership was conducted by order of the Court of Common Pleas, as a result of which the said Court ordered that the said plaintiff local union be freed from supervision by the International Union and be permitted to exercise the right to manage and conduct its own affairs as an autonomous local union and to elect its own officers. The said Court further enjoined defendant William E. Maloney and the International Union from committing any acts against the members or officers of Local 542 in retaliation for instituting the legal action as aforesaid.

14. Plaintiff, Roy J. Underwood, having been elected President and Business Manager by the aforesaid election,

conducted under order of the Court as aforesaid, carried on the business of Local Union 542 in a highly successful and satisfactory manner. He was re-elected on two subsequent occasions by the membership and on the last occasion, because of the highly satisfactory manner in which he was carrying on the business of Local 542, he was elected for a term of four years, ending June of 1954. During his period of tenure in office, plaintiff, Roy J. Underwood, has succeeded in increasing the membership of Local Union 542 and its branches from two thousand members to approximately four thousand members. He has succeeded in bringing about many reforms for the best interests and welfare of the membership at large. He has improved the working conditions and increased the wage rates and has continued until the present date in his efforts to bring the wage scales and working conditions to reasonable and satisfactory levels. The treasury of the Local has been built up to satisfactory and substantial proportions with ample reserves; a death benefit fund has been increased to approximately $100,000.00; greatly improved office facilities and modern equipment have been established throughout the jurisdiction of the Union with an efficient and conscientious staff to administer the business of the local unions. The said Business Manager has succeeded in organizing employees in virtually every part of the area covered by the jurisdiction of the said Union and has effected collective bargaining agreements with employers in all the said areas and particularly in the areas where no collective bargaining agreements existed prior to his taking office. A collective bargaining agreement has been effected with the Allied Construction Industries of Delaware, Inc. and independent employers covering all employees in the State of Delaware. Collective bargaining agreements have been entered into with the Scranton Builders' Exchange and Wyoming Valley Contractors' Association, covering 11 counties in the upstate Pennsylvania area; with the Building Construction Employers' Association, Harrisburg and vicinity, covering

14 counties in upstate Pennsylvania; with Lehigh Valley Construction Council, covering the 4 counties adjacent to the Philadelphia area; with the Wharf and Dock Builders' Association, covering certain contractors throughout the eastern half of Pennsylvania, including the Philadelphia area, and the State of Delaware. Within the area of the jurisdiction of the Union, numerous contracts have been entered into with independent contractors not affiliated with any association. Prior to April 30, 1951, contracts were in effect with the three defendant employer associations, namely, General Building Contractors' Association, Pennsylvania Excavators' Association and Contractors' Association of Philadelphia, representing 98 contractors in the Philadelphia area.

15. By virtue of an oral agreement of May 1, 1950, a Welfare Trust Fund was created to provide sickness and accident benefits to eligible employees and their families within the jurisdiction of the Union. Under the said agreement, the members of all employer associations as well as independent contractors, were obliged to make contributions into the Welfare Fund at the rate of 10¢ per compensable man hour. During the 2-year period from May 1, 1950, until May 1, 1952, approximately $210,000.00 was paid out in benefits to eligible employees and their families and at the present time there is approximately $675,000.00 remaining in the Welfare Trust Fund.

16. The number of contractors within the jurisdiction of the Union who engage operating engineers totals approximately 623. Of this number, 98 contractors are members of the three defendant employer associations; namely, the General Building Contractors' Association, the Pennsylvania Excavators' Association and the Contractors' Association of Philadelphia. The total number of employees normally engaged by the members of the three defendant contractors' associations is about 350 to 400. The total number of em-

ployees engaged by the remaining contractors within the jurisdiction of the Union totals approximately 3600.

17. During the month of February, 1952, the plaintiff Local Unions gave notice to all of the Employers of their desire to effect new agreements commencing May 1, 1952. The representatives of the three defendant employer associations, namely, the General Building Contractors' Association, the Pennsylvania Excavators' Association and the Contractors' Association of Philadelphia, who numbered approximately 98 employers and engaged approximately 350 men, failed to negotiate in good faith. On the other hand, negotiations were entered into with the remaining employers, as a result of which agreements were consummated with 525 contractors. Said agreements provide improved working conditions and increased wage rates as advocated by the Construction Industry Stabilization Commission.

18. As a consequence of the contracts effected with the independent contractors and certain of the employer associations as above set forth, the 3600 members of these employers continued to work without any interruption of service, and petitions were filed with the Construction Industry Stabilization Commission for approval of the rates agreed upon.

19. As a result of the lack of good faith on the part of the representatives of the three defendant employer associations, no contract was entered into with them on May 1, 1952, and the members of the local unions refused to enter into any employment relationship with these employers in the absence of any contract. Notwithstanding the apparent indifference on the part of the representatives of the three defendant employer associations, plaintiff, Roy J. Underwood, continued in his efforts to effect some satisfactory agreement, but his efforts were totally unavailing, and the

employer representatives declined to enter into discussions in good faith. The said employers, instead of attempting to adjust the controversy in good faith, attempted to persuade the membership of the plaintiff local unions to repudiate their leadership through the medium of letters of a highly improper character and through other devices amounting to unfair labor practices. The membership of the plaintiff unions rejected the unethical and illegal overtures on the part of the employers and repeated and reaffirmed their confidence in and support of their president, Roy J. Underwood.

20. Having failed to create dissension between the union members and their leadership, the said employers then sought to establish a rebel faction in order to create confusion and chaos within the union ranks. Letters were sent out over the name of an irresponsible member of the union who had been physically and mentally ill for some time and who was in need of funds. The employers, through the use of this member's name, caused to be distributed leaflets and letters of a highly scurrilous and derogatory nature attempting to cast reflection on the officers of the plaintiff unions with respect to the manner in which they had carried out the business of the union. The said leaflets and letters also attempted to organize a so-called "back-to-work" movement and to create friction within the ranks of the union members. The members of the union refused to be misled by these tactics and again expressed their confidence in their leadership and in the manner in which their affairs were being conducted.

21. All of the foregoing acts were directly engaged in or sponsored by the defendant, Harry R. Halloran, as the representative of the three defendant employer associations. Said Harry R. Halloran, while using every means to forestall any discussions which might lead to a contract, at the same time misled the members of the associations which he represented into believing that the plaintiff unions' repre-

sentatives were arbitrary and capricious in their demands and that they were refusing to carry on any discussions for the purpose of effecting a contract.

22. The said Harry R. Halloran used devious means to prevent any of the members of the defendant employer associations from individually entering into contracts with the plaintiff unions. The said members in many instances were the victims of misinformation or coercion practiced by the said Harry R. Halloran.

23. From the very inception of the controversy between the plaintiff unions and the defendant employer associations, the Building and Construction Trades Council of Philadelphia and Vicinity and, particularly, Norman Blumberg and Joseph Burke, entered into a conspiracy with the defendant employer associations and defendant Halloran in restraint of trade in interstate commerce in that they conspired to prevent the plaintiff local unions from the free exercise of their right to collectively bargain with employers; in attempting to fix and maintain a standard of rates and working conditions contrary to the desires and best interests of the plaintiffs as well as employers other than those who are members of the defendant employer associations; in attempting to cause the unemployment of the members of plaintiff local unions by coercing their employers to discharge the members of the plaintiff unions; and by other means which will be proved at the time of trial.

24. The concerted action of defendant Halloran and the representatives of the building and Construction Trades Council of Philadelphia having failed to coerce the plaintiff unions into submission, defendant Halloran thereupon engaged the defendant J. Howard McGrath as an agent, to further the objectives of the said conspiracy. Defendant J. Howard McGrath, by the exercise of improper pressures thereafter prevailed upon defendant William E. Maloney to

enter into the said conspiracy for the purpose of compelling the plaintiff local unions to accept a contract proposed by the defendant Halloran fixing rates and working conditions which were detrimental to the plaintiff unions and their members and which rates and working conditions were intended to be expanded to cover the entire industry. The aforesaid unlawful conspiracy and combination to suppress and restrain trade in interstate commerce is in violation of Section 1 of the Act of Congress of July 2, 1890 entitled "An act to protect trade and commerce against unlawful restraints and monopolies", commonly called the Sherman Act (15 U. S. C. A. 1 et seq.) as amended, and in violation of Section 4 of the Act of Congress of October 15, 1914, Chapter 323 (15 U. S. C. A. 15) commonly called the Clayton Act.

25. In furtherance of the said conspiracy, defendants Maloney, McGrath and Halloran designated William Carter, the President and Business representative of Local 825 of the International Union of Operating Engineers, to enter into negotiations between the plaintiff unions and the defendant Halloran with instructions to consummate the agreement proposed by Halloran without the consent and contrary to the interests of the members of the local unions.

26. The said William Carter before attending any negotiations between the parties, entered into a pre-arranged understanding with Halloran as to the role which he was to play and the terms which he was to advocate to the plaintiffs. The said William Carter attended several meetings between the plaintiff unions and the representatives of the defendant employer associations during all of which the said William Carter urged and attempted to coerce the plaintiff unions into accepting the proposals of the defendant Halloran. Upon the last occasion when the union officials declined to accept those proposals, the said William Carter then and there threatened that he himself would write and

execute a contract with the defendant employer associations on behalf of the plaintiff unions.

27. Thereafter plaintiff Underwood communicated with the defendant Maloney to complain regarding the interference of William Carter with the plaintiff unions' right to bargain collectively and travelled to Chicago to discuss the matter with the said Maloney. By pre-arrangement between defendant Maloney and defendant Halloran and in furtherance of the said conspiracy, defendant Halloran proceeded to Chicago and attended the meetings between plaintiff Underwood and defendant Maloney. For a period of two days meetings were held, attended by defendant Halloran, defendant Maloney, William Carter and plaintiff Underwood, during which defendant Maloney consistently attempted to force plaintiff Underwood to accept the proposals of defendant Halloran. Plaintiff Underwood informed defendant Maloney on many occasions that the Halloran proposals were unacceptable to the union membership and that they constituted a serious inroad upon the terms and conditions of the existing contracts with the other contractors in the area. Defendant Maloney sought to force plaintiff Underwood's approval, despite opposition of the plaintiff local unions and despite the loss of rights which would result from the acceptance of that proposal.

28. Thereafter defendant Maloney instructed plaintiff Underwood to submit the proposal of defendant Halloran to the membership of the plaintiff local unions and to advise the membership that he, defendant Maloney, strongly desired the membership to accept those proposals.

29. In compliance with this direction of defendant Maloney as General President of the International Union, plaintiff Underwood brought the matter to the attention of the members of the plaintiff unions at a regular meeting on Tuesday, August 5, 1952. Said meeting was attended on

stage by two representatives of the International Union, one John J. McDonald, Vice-President of the International Union assigned to this area, and Hunter P. Wharton, Assistant to the General President. Both of these representatives were afforded every opportunity to address the membership and were extended every courtesy at the meeting. Plaintiff Underwood submitted the Maloney-Halloran proposal to the membership and Vice-President McDonald discussed the proposal urging its adoption and advised the membership that defendant Maloney demanded its adoption and that if it was not adopted, a new charter would be issued to some other group in this area. The membership voted on the said proposal and unanimously resolved to reject the proposal and directed plaintiff Underwood to carry on negotiations as he had previously been doing.

30. Following the said membership meeting, Vice-President McDonald, the International representative assigned to this area, recognizing that the defendant Halloran had incorrectly informed various contractors who are members of the defendant employer associations as to the true state of affairs, thereupon addressed a communication to the officers of the three defendant employer associations, urging that they meet with plaintiff Underwood, a committee of the local union, and himself to inform themselves of the true situation and endeavor to work out a solution to the problem. A true and correct copy of the said letter is hereto attached and marked Exhibit "A."

31. Realizing that the letter, marked Exhibit "A", transmitted by Vice-President McDonald would result in a meeting of all of the officers with plaintiff Underwood, at which the misinformation furnished by defendant Halloran would be exposed, defendants Maloney, Halloran and McGrath thereupon sought to prevent such meetings from taking place. Defendants Maloney and Halloran were directly instrumental in encouraging and otherwise persuading the

members of the three defendant employer associations to refrain from communicating with plaintiff Underwood in an effort to ascertain the true state of affairs and arrive at an agreement. Several contractors communicated with the representatives of the plaintiff unions and with the International Vice-President McDonald to make arrangements for an early meeting, but these arrangements were all caused to be cancelled by the actions of defendants, Maloney and Halloran, who were desperately intent on preventing any contract from being consummated other than the one proposed by defendant Halloran.

32. At the same time and in furtherance of the aforementioned combination and conspiracy, defendants Halloran and Maloney conspired with the officers of the Building and Construction Trades Council of Philadelphia to create a crisis in order to justify the intervention of defendant Maloney and in order to deprive the members of the plaintiff unions of the right to work and other legal rights. In furtherance of the said conspiracy, the representatives of the Building and Construction Trades Council of Philadelphia, released statements to the newspapers that they intended to withdraw all the members of their affiliate unions from any job on which members of plaintiff unions were employed and to compel all employers to refuse employment to any and all such members. On Monday, August 11, 1952, the representatives of the Building and Construction Trades Council, in furtherance of the conspiracy aforementioned, proceeded to coerce the members of their own affiliate unions into leaving the jobs where such operating engineers were employed and to threaten with reprisals employers who engaged or refused to discharge members of plaintiff unions.

33. Notwithstanding the unlawful conduct on the part of defendant Maloney and his co-conspirators, as aforesaid, the members of the plaintiff unions refused to accede to and be coerced into acceptance of the Maloney-Halloran proposal.

whereupon defendant Maloney, in furtherance of the conspiracy heretofore outlined, wrote and caused to be delivered a letter to the office of plaintiff unions at 3:30 p. m. on Monday, August 11, 1952, unlawfully ordering the members of the plaintiff unions to return to work and ordering the plaintiff Underwood to direct the members of the said local unions to return to work and to accept the proposal of the defendant Halloran. The members and the officers of the plaintiff unions were further directed to comply with the terms of the aforesaid letter within 24 hours. A true and correct copy of the said letter is hereto attached and marked Exhibit "B".

34. Plaintiffs aver that a settlement of the controversy would have been effected approximately 2 months ago were it not for the intervention of the defendant Maloney, which was deliberately calculated to prevent the representatives of the plaintiff unions from effecting any agreement with any representatives of the employer associations other than that proposed by defendant Halloran. The said inervention by the defendant Maloney was pursuant to the unlawful conspiracy in restraint of commerce, as aforesaid.

35. Unless a temporary restraining order is granted immediately, restraining defendants Maloney and the International Union of Operating Engineers from enforcing the order contained in Exhibit "B", immediate and irreparable injury, loss and damage will result to the plaintiffs before notice can be served and a hearing had thereon, in that the members of the plaintiff unions will be immediately compelled to return to work for wages and under conditions to which they have not agreed; in that they will be required to work against their will in violation of the Thirteenth Amendment of the Constitution of the United States which prohibits involuntary servitude, and further irreparable loss and damage will result in that the morale and spirit of the members of the plaintiff unions will be so seriously im-

paired as to very materially affect their ability thereafter to bargain effectively for wages and working conditions.

36. Unless all of the defendants are immediately restrained from engaging in any acts in furtherance of the aforesaid conspiracy, the members of the plaintiff local unions will suffer irreparable damage and loss in that they will be deprived of their employment and the right to work, pursuant to existing contracts.

37. By reason of the fact that the validity of the order contained in Exhibit "B" is in grave doubt in that it appears to be illegal and in violation of the Constitution of the International Union and of the Constitution of the United States, plaintiffs are faced with the alternative of either refusing to abide by the said order, in which event they run the risk of serious disciplinary action by the International Union of Operating Engineers, or of immediately complying with the said order, in which event irreparable damage would occur, as aforesaid.

WHEREFORE, plaintiffs pray Your Honorable Court for relief as follows:

(a) By enjoining defendant Maloney and the International Union from enforcing the order contained in the letter of August 11, 1952, marked Exhibit "B".

(b) By restraining the defendant Maloney and the International Union and its representatives from interfering with the internal management of the plaintiff Local Unions and from interfering with the plaintiff Local Unions in their negotiations for a contract with the defendant employer associations.

(c) By restraining all defendants from engaging in any acts in furtherance of the aforesaid conspiracy.

Exhibit P-58

(d) By restraining the Building and Construction Trades Council and its representatives from urging or inducing the members of its affiliate unions to refuse to work on any job where operating engineers are employed, and by requiring the said Building and Construction Trades Council and its representatives and the representatives of the affiliate unions to retract the instructions given to the membership urging that they refuse to work.

(e) By adjudging and declaring the aforesaid order of August 11, 1952, contained in Exhibit "B", to be illegal and void.

(f) By enjoining all defendants from interfering with any of the members of the employer associations in attempting to effect a bargaining agreement with the plaintiff unions.

(g) By enjoining all of the defendants from engaging in and continuing to engage in secondary boycott.

(h) By awarding damages caused by the unlawful conspiracy and misconduct as aforesaid on the part of all defendants, in the sum of at least $50,000.00 per day, resulting from the loss of employment on the part of the members of plaintiff unions, plus such other damages as Your Honorable Court may deem proper, all such damages to be trebled, plus costs and attorneys' fees.

(i) Such other and further relief as the plaintiffs may be entitled to receive in the premises.

FREEDMAN, LANDY AND LORRY
By ABRAHAM E. FREEDMAN
Attorneys for Plaintiffs

Exhibit P-58

Commonwealth of Pennsylvania
County of Philadelphia } ss.

ROY J. UNDERWOOD, being duly sworn according to law, deposes and says that he is one of the plaintiffs herein; that he is the President and Business Manager of the International Union of Operating Engineers, Locals 542, 542A, 542B and 542C; and that the facts contained in the foregoing Complaint insofar as they are based on his personal knowledge are true and correct; and insofar as they are based upon information and belief are true and correct to the best of his information and belief.

ROY J. UNDERWOOD

Sworn to and subscribed before me this 12th day of August, 1952.

JESSIE D. VALENTI
Notary Public

(Seal)
My Commission Expires January 4, 1953

EXHIBIT P-58.

IN THE
UNITED STATES DISTRICT COURT.
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCALS 542, ET AL. } Civil Action
v. } No. 14071
WILLIAM E. MALONEY, ET AL., }

SETTLEMENT STIPULATION.

1. It is agreed that Local Unions 542, 542-A, 542-B and 542-C shall immediately terminate the work stoppage, and

the members shall be permitted to return to work to the employer members of said associations, if they so desire, all previous orders, if any, to the contrary to be countermanded by the unions. Pending the decision of the arbitrator the parties shall abide by the terms of the collective-bargaining agreement of 1949.

2. Local Unions 542, 542-A, 542-B and 542-C and the General Building Contractors Association, Pennsylvania Excavators Association and Contractors' Association of Philadelphia, shall immediately submit for determination by Dr. George W. Taylor the drafting and execution of a collective-bargaining agreement between the parties in accordance with the findings to be made by him after taking testimony in connection therewith. Said contract shall be binding on the parties hereto. In such arbitration proceeding it shall be relevant to disclose to the Arbitrator the settlement proposals heretofore offered by the contractors and the demands of the Unions. There shall be no bar to the presentation of evidence by either party as to the full negotiations to the date of said arbitration. The terms and conditions determined by the Arbitrator shall be retro-active to May 1, 1952. No claim for retro-active pay shall be made by the Unions for any period prior to April 30, 1952. The arbitration shall commence forthwith, with each party afforded three days for the presentation of evidence, and the decision shall be rendered within ten days after the presentation of evidence.

3. Pending the decision of the Arbitrator with respect to the Welfare Program the Welfare payments shall be made to Dr. George W. Taylor, and funds shall be applied in such manner as to insure payment of benefits.

4. Both parties agree to file in good faith a joint petition with the Construction Industry Stabilization Commission for the approval of all rates and terms as may be fixed by the Arbitrator.

5. The pending action between the International Union of Operating Engineers, Local Unions No. 542, 542-A, 542-B and 542-C, etc., et al, v. William D. Baker Co., et al, instituted as Case No. 12559, in the United States District Court, for the Eastern District of Pennsylvania, including the unions' claim for damages based upon its claim for retroactive wages and the counterclaims of the employers shall be marked settled, discontinued and ended, with prejudice, exception, however, that the petition for the transfer of the Welfare Fund to the fund on deposit at the Broad Street Trust Company, shall be left for determination by the Court, reserving all defenses which may be asserted by the respondents to said petition, and all rights which the petitioners may have.

6. The proceeding filed in the Court of Common Pleas No. 5 of Philadelphia County, as of March Term, 1951, No. 4413, by the General Building Contractors Association, et al, v. International Union of Operating Engineers, Local Unions 542, 542-A, 542-B and 542-C et al, shall be marked settled, discontinued and ended upon payment of the prothonotary's costs only, which shall be paid by the employers, and the Unions shall withdraw any action taken by them or contemplated to be taken by them in connection with the decision filed by Justice Chidsey of Pennsylvania under case No. 185, as of June term.

7. The Court shall forthwith mark the proceedings instituted in the United States District Court, for the Eastern District of Pennsylvania, between International Union of Operating Engineers, etc., et al, v. William E. Maloney, General President of the International Union of Operating Engineers, et al, under Case No. 14071, dismissed, with prejudice.

8. The costs and fees of the Arbitrator in connection with the arbitration proceeding for the collective-bargaining

agreement shall be agreed by the parties as follows: the employers shall pay two-thirds and the union one-third thereof. The costs and charges of the Arbitrator in connection with the Welfare Program shall be borne by the Funds.

9. The above stipulation shall be subject to the approval of the membership of Local Unions 542, 542A, 542B, 542C, and a meeting of said membership shall be called for Monday, August 18, 1952, for the purpose of considering the foregoing proposals.

/s/ M. J.
/s/ McHugh
/s/ R. L. T.
/s/ M. H. S.
/s/ A. E. F.

8/15/52

EXHIBIT P-59

(Seal)

INTERNATIONAL UNION OF OPERATING ENGINEERS
Affiliated With The American Federation of Labor
(Union Label)
Telephone National 9265
Carpenters Bldg., 1003 K St., N.W.
Washington 1, D. C.
Office of the General Secretary-Treasurer

September 24, 1952

Mr. Roy J. Underwood,
2801 Garrett Road,
Drexel Hill, Pa.

Dear Sir and Brother:

There is enclosed herewith a copy of the Decision of

Exhibit P-59

September 24, 1952 of the General Executive Board in the matter of charges brought against you.

Please take notice thereof and govern yourself accordingly.

Fraternally yours,
INTERNATIONAL UNION OF OPERATING ENGINEERS
By CHAS. B. GRAMLING
General Secretary-Treasurer

CBG:MEB

CASE NO. 1 Continued

In the Matter of Charges against Roy J. Underwood

This matter came on for hearing before the General Executive Board in the regular order of business before the Board upon the written charges filed by Brother W. E. Carter against Brother Roy Underwood, the written answer and defense of Brother Underwood, and a half-day session was devoted to the matter in which witnesses were heard and exhibits introduced and at the conclusion of which both sides rested after announcing that no more evidence was desired by either to be introduced; whereupon the General Executive Board took the matter under advisement. At all times during the hearing on this matter, the General Executive Board was presided over by Vice President Joseph J. Delaney and at all times during both the hearing of the case and the deliberations of the General Executive Board which followed, General President Maloney refrained from voting on the matter or the giving of any recommendations thereon to the Board.

The following opinion and decision is reached as the unanimous action of all members of the Board participating therein.

The Board finds that the charges were valid charges con-

Exhibit P-59

stituting violations of the Constitution and Ritual, that due notice had been given of the hearing, that copy of the charges had been furnished Brother Underwood and same were adequately informative, that Brother Underwood accepted the right of the General Executive Board to try said matter and that the General Executive Board had jurisdiction over the same by virtue of the Constitution of the International Union of Operating Engineers with particular reference to Article XVI, Section 1, Article XVI, Section 3, Article XVII, Section 3, and other pertinent sections, and the Ritual, and that at the close of the case Brother Underwood stated he had had a fair, full and complete hearing.

The Carter charges as filed charge Underwood with three specific violations of the Constitution, viz., (1) refusal to obey orders of General President, (2) filing lawsuit when no complaint had been filed prior thereto with any department of the Internationa, (3) publishing literature of a defamatory nature by allegations against General President and Officers contained in lawsuit. To these charges Underwood filed his answer, categorically denying each charge and setting up 19 pages of matter foreign to the issue. We have searched in vain for something therein constituting a defense to the charges as filed but nothing appears.

The facts in this case show clearly that on August 11, 1952, Underwood was representing Local #542 in capacity of President and Business Manager.

That on August 11, 1952 General President Maloney had requested Underwood to issue notice returning men who were on strike back to work and to advise the General President within 24 hours of his intention to cooperate; that Underwood refused so to do and refused to notify the General President as requested and within the twenty-four hour period filed a bill in equity in Federal Court charging the General President with conspiracy and certain criminally disgraceful activities, alleged to be harmful to the membership of Local #542.

Upon review of all the evidence the Board finds the Carter

charges are true and that Underwood is guilty as charged of violations contrary to the provisions of the Constitution and Ritual, in such cases made and provided. The Board finds that the General President had power to issue the request of August 11th upon Underwood by virtue of his constitutional powers referred to in Article VI, Section 3, beginning "He shall have power to direct and supervise all Local Unions, Local Officers and any other subdivision of the International Union and members."

The Board further finds that Underwood owed a duty to obey the General President's request of August 11, 1952 by virtue of his obligation in the Ritual and by the mandate of the Constitution referred to in Article XXIII, Subdivision 3, Section a, beginning: "Members of Local Unions shall conform to and abide by the Constitution, Laws, Rules, Obligation and Ritual and the decisions, rulings, orders and directions of any authority of the International Union empowered by this Constitution to make them," and that Underwood violated his duty as a member in this regard.

The Board further finds that Underwood was bound by his obligation as a member by the provisions of the Ritual and by the Constitution to refrain from filing any suit at law or equity until and unless he had first followed and exhausted all procedures provided within the Constitution for the hearing of complaints as required by Article XVII, Section 3 of the Constitution. That in derogation of this duty he made no effort to file a complaint or plea within the organization but filed his action in court in disregard thereof.

The Board further finds that the various charges of illegal conspiracy on the part of General President and third persons to violate the United States laws to the damage of the membership and also other statements, as alleged in Underwood's equity suit filed August 12, were false and untrue and that the same constitutes publishing literature of a defamatory nature against an officer in violation of the Constitution, Article XVI, Section 1, for which Underwood is adjudged guilty and must be held responsible.

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In reaching these findings the Board takes into consideration the fact that it is common knowledge within the organization that Brother Underwood had had much experience in the litigation of union matters in the courts of Pennsylvania, also that he was directly responsible for the preparation of the "Resistance Resolution" adopted by his local executive board shortly before August 11, 1952 authorizing ways and means for legal resistance to any action in the event the International Union should attempt to inject itself in the local strike situation. The Board further takes into consideration the fact that Brother Underwood was a member of the Law Committee of the 24th General Convention of the International Union of Operating Engineers at Seattle, Washington, in April of 1952 and was actively interested in and better advised on constitutional procedure within the organization than most members and that while on said Law Committee he co-sponsored and recommended to the 24th General Convention that Article XVII, Section 3 of the Constitution be amended to read as follows:

"All Court Actions Superseded

"No suit or other action at law or equity shall be brought in any court by any member, officer or subdivision of the International Union of Operating Engineers, until and unless all rights, remedies and provisions for hearing, trial and appeal within the organization shall have been properly followed and exhausted by the member, officer or subdivision complaining. Any member violating this provision, shall, in addition to the penalties prescribed in the Constitution and ritual, be automatically fined the full amount of the costs incurred in the defense of any such action by the Union, together with such costs additional as the court may fix or assess against said member.

The said amendment was adopted and was in full force and effect at all times described herein.

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Since the General Secretary-Treasurer has reported to the General Executive Board that the International Union has incurred necessary legal expense in retaining counsel for the defense of the suit filed by Underwood in the sum of $3500.00 it follows that said amount is duly chargeable to Underwood and should be paid by him.

Any description of conditions existing in Philadelphia is a minor matter and secondary to the main issues on the charges before the Board but in view of the fact that Underwood had devoted much space in his written defense and in the testimony of witnesses to existing conditions we believe a brief statement by the Board is advisable.

The following clearly appears from the evidence: that when the General President's Order of August 11 was issued Underwood's local had been on strike against the three contractor associations for 104 days, during which time negotiations for a new labor agreement were getting nowhere. A contract with independent contractors had been entered into. The strike held up all construction work in the area, affecting not only the operating engineers but throwing 6500 members of the allied Building Construction Trades out of work. Pressure of many kinds from many sources was daily mounting, making final intervention by the International Union in the local picture not only advisable but necessary if the local deadlock, influenced as it was by personalities and reprisals, was to be broken. There is no doubt Underwood greatly resented the success of the contractor associations in securing through court order a two-year extension of a previous contract in spite of Underwood's insitence that it could be extended for only one year and this resentment apparently affected the negotiations quite seriously.

There is no doubt that an emergency existed justifying the General President in ordering Underwood and the contractor associations' representative into Chicago and holding them in conference for several days during which the General President was able to get more concessions for the

men than Underwood had been able to secure in the long term of the existing strike. These concessions secured were (1) an overall wage increase of 40c per hour; (2) a consolidation by consent of the two-existing welfare plans; (3) a point by point adoption of all conditions of the existing independent contractors' agreement with the exception of 4 or 5 minor points to be negotiated out between the parties on their return to Philadelphia and which, in view of what was at stake, were in the opinion of the Board exceedingly minor matters. Thereafter the parties returned to Philadelphia, negotiations were resumed and instead of confining the discussions to the matters agreed upon at Chicago Underwood insisted on enlarging his demands and adding a safety code to the negotiations, resulting in a disagreement and adjournment.

In the meantime the strike continued, pressure mounted, the Governor of Pennsylvania proceeded to take matters up with General President Maloney. Thousands of dollars of Local #542's funds were being spent by Underwood to hire pickets from the Maritime Union and the Building and Construction Trades Council of Philadelphia whose 6500 workmen were forced out of work adopted an order whereby none of its members could work on any job on which an operating engineer was employed, presenting a situation unique and unheard of in labor history. There are other minor details in the picture as it existed but are inconsequential. We have presented the main features as clearly appear from the evidence before us and find the facts thereof to be as stated.

There is nothing in the foregoing review of conditions or the conditions Underwood describes which justify in any manner the violation by Underwood of his duties as contained in the charges before us or excuse his actions therein.

In his defense Underwood says that the purpose of his suit against the General President and others was "to test the validity of the order of the General President." Ignoring for the moment the specific restrictions in the Constitu-

tion preventing him from taking such action and analyzing his motive, a question of good faith and credence immediately arises. How can any merit be attached to such an excuse when we witness a court action charging criminal conduct on the part of the General President filed by Underwood for the ostensible purpose of testing the power of an executive and then observe Underwood dismissing his case with prejudice before the claimed purpose was achieved and before any opportunity was offered for the executive to prove his innocence of the conduct charged against him? The facts show and the Board finds that this suit was never designed for the purpose claimed by Underwood but on the contrary was wholly manufactured by him and constituted a vicious and reprehensible attempt by him to discredit and defame his superior officer who was thereby wrongfully and publicly accused of criminally disgraceful conduct in a court proceeding and in the public press.

DECISION

In the Matter of the Charges Brought by Brother Wm. F. Carter against Brother Roy J. Underwood

The General Executive Board finds that the defendant, Roy J. Underwood was properly charged and tried in conformity to the Constitution, that he was duly notified and that he entered appearance to the jurisdiction of the Board by filing his answer to the charges and by appearing at the hearing with his witnesses and announcing his readiness to proceed.

The General Executive Board further finds that Roy J. Underwood is guilty of the violations referred to in the charge in that (2) he defied the constitutional authority of the General President contrary to the duty imposed upon him by the Constitution and Ritual (b) he filed a lawsuit against the General President and the International Union

contrary to the provisions of the Constitution, Article XVII, Section 3 and the Ritual (c) he published literature of a defamatory nature against the General President contrary to the provisions of Article XVI, Section 1 of the Constitution by alleging criminally disgraceful and discreditable acts and accusations of conspiracy to do illegal things, alleged to have been performed by General President Maloney as set forth in an equity suit filed by him in the U. S. Federal Court in Philadelphia, Pa. on or about August 12, 1952, all of which the General Executive Board finds the facts to be.

Coming now to fixing the penalty, it is hereby ordered that the defendant, Roy J. Underwood be and he is hereby fined $3500.00 and removed from office forthwith and suspended from membership in the International Union of Operating Engineers and all branches thereof for a period of six years from the date hereof, provided further however and it is so ordered that upon his promptly and regularly discharging his financial obligations to the organization he be placed on probation for a period of six years, during which period of probation he shall be barred from attending any and all meetings, local and otherwise, of the International Union of Operating Engineers and further be barred from holding office or participating directly or indirectly in any of the nominations, elections, campaigns, gatherings or other internal activities of the organization, local and otherwise, and that during said probation period, conditioned upon the strict observance of the terms thereof as stated herein, the penalty of suspension be and the same is hereby conditionally stayed.

It is further ordered as a condition of said decision and probation that in the event there is any violation by Roy J. Underwood of the spirit and intent of the foregoing probation order that then upon a finding of the fact thereof by the General Executive Board the Board shall thereupon order the decision and sentence into execution forthwith.

CHAS. B. GRAMLING
General Secretary-Treasurer

Exhibit P-191

So ordered this 24th day of September 1952.

The foregoing, having been duly adopted by the General Executive Board upon motion duly passed it was resolved that a copy of the foregoing be served upon Roy J. Underwood by the General Secretary-Treasurer. So ordered.

EXHIBIT P-191.

Friday July 25 52

Special Executive Board Meeting

Presided over by Pres. R. J. Underwood. Board Members Present were as follows A. L. Smith, J. Ungaro, G. Galle, Jr., M. Howlett, J. Devlin, J. McCormick, P. Pantalea, C. Acchione, M. Rudden, H. Dawson, W. Pacey, U. Brightbill, E. Lewis, J. Leone, N. Unruh, H. Lavey.

(D-15-A Id M M)

Meeting called to order By Pres. Underwood at 8:35 P. M.

After meeting. Much Discussion. Explanation by Pres. Und.—Conference with Haller, by Carter, 1st. Conform to existing contract—Indpend. to be same as Carters suggestions. After their conference. R. J. U. asked them if the new contract was the starting Point. Carters Proposals to be rider on 1949 agreement. General Con. tractors associa—& Carters Proposal to Withdraw all Law suits. Add the Carter Proposal to 1949 Agreement, including Merging of New Welfare Fund.—M. Mechanic Clause. Cost of Living. R. J. U. Explained How He called Carter, & Told Him about his name on Proposals, R. J. U. Explains Meeting of this Morning **(83)**

(2) R. J. U.

How Welfare Fund is in Operation & How many associations & Independents have agreed to, and are Paying into New Fund.

Exhibit P-191

R. J. U. Explained How outside interference, could not Help them to get an agreement. Only by Negotiating with Duly Authorized Officers of this 542 Local.

(D-15-B Id M M)

R. J. U. Explained How Carter divulged his authority to write agreement. This was done while Contractors were Present.

R. J. U. Told about Genl. Pres. Calling him after Meeting. Told of Pressure being Put on G. P. By Tobin Marshall, A. G. Contr. Told how he ask G. Pres. if he authorized Carter. Told also Ex. Board would decide at this Meeting.

Question of back pay.—Mandatory.

(#3) one missing—Pension Fund—to Arbitration

(4 Safety Code— to Arbitration

#5 Keep as is

#6 Arbitrate

#7 Keep as is

#8 Keep as is

#9 Arbitrate **(84)**

(3) #10 Arbitrate

#11 Arbitrate

#12 Arbitrate

#13 Arbitrate

#14 Arbitrate—only the amount. The remainder to be kept as is.

#15 —

#16—#18 Arbitrate

#17—#19

(D-15-C Id M M)

J. Ungaro. I believe Contractors want concessions same as in Past. Example. No Oilers on any cranes. Give Pumps to Laborers. 1946 & 45 Agreement.

Ed. Lewis

Who would handle this arbitration. ? ? Impartial Arbiter.

Unruh

Would we have to go back to work during arbitration?

R. J. U. Yes

Exhibit P-191

Acchione

R. J. U.

We Don't arbitrate wages. No.

Howlett

Did Carter say He would write Contract, & Sign. R. J. U. Yes.

Ungaro

Did Carter come and discuss (85)
(4) this with You. R. J. U. No.

Pacey

Is Carter coming in to-nite. R. J. U. No.

R. J. U.

Maloney says I have all the Regard in the World for You. Roy!

R. J. U.

Going to try to see Maloney.

Hem

Motion by M. Howlett that 12 Demands be put to arbitration Indicated be submitted to arbitrat
(D-15-D Id M M)
Providing remainder rest of demands be agreed to By Employers. 2nd by J. Ungaro. Carried Unanimous.

G. Gaulle, Sr.

How about some literature to give to other trades. Concerning our Strike Position.

R. J. U.

Explained our Position, with Bldg Trades. about crossing Picket lines.

Pantaleo

They don't even trust themselves. (86)
(5) C. Acchione

Inspectors going around saying "Engineers going back to Work Monday"

G. Gaulle, Sr.

Barronett supposed to Have another letter out.

N. Unruh

They expect to use the Carter Contract to Bring us into Court.

Ungaro

How can we go about People sneaking machines onto jobs.

(D-15-E Id M M)

Pantaleo

Bridge & Richmond. They won't allow agent in Plant.

R. J. U.

Try to get names of People in there. Motion by Pacey & Achione

Meeting adjourned at 9:40 P. M.

Harry W. Lavery. **(87)**

DEFENDANTS' REQUESTS FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The Court is respectfully requested by defendants to make the following findings of fact and adopt the following conclusions of law. Findings of Fact Nos. 1 to 30, inclusive, and Conclusions of Law Nos. 1 to 6, inclusive, are submitted as applicable to each of the two above captioned cases which were tried together. As hereinafter indicated, Findings of Fact Nos. 31 to 47 and Conclusions of Law Nos. 7 to 13 are submitted in the case in which Roy J. Underwood is plaintiff, and Findings of Fact Nos. 48 to 67 and Conclusions of Law Nos. 14 to 21 are submitted in the case in which Homer Dawson et al., are plaintiffs.

FINDINGS OF FACT.

1. Local Union 542, International Union of Operating Engineers, is a labor union the membership of which is composed of engineers, oilers and apprentices engaged in the operation and maintenance of mechanical and hoisting

equipment such as cranes, bulldozers, pile drivers, compressors and other equipment in the building and construction trades industry.

2. The plaintiff in Civil Action No. 14398, Roy J. Underwood, was elected President and Business Manager of said Local Union on or about March 25, 1948, and continued in said office until he was removed therefrom by order of the General Executive Board of the International Union dated September 24, 1952.

3. The plaintiffs in Civil Action No. 14547, Homer Dawson, et al., were at the times referred to in the Complaint in that action, and still are, members of said Local Union No. 542 or of one of its branches known as Local Unions 542-A, 542-B and 542-C, respectively.

4. Prior to May 1, 1952, collective bargaining agreements had been traditionally negotiated by said Local Union with representatives acting jointly for three Employer Associations, to wit, General Building Contractors Association, Pennsylvania Excavators Association and Contractors Association of Philadelphia. The collective bargaining agreements so negotiated with said three Associations established the wages, hours and working conditions to be observed by all employers of members of said Local Union within the five county area composed of Philadelphia County, Montgomery County, Chester County, Bucks County and Delaware County, and the State of Delaware.

5. On May 1, 1952 the Local Union under the leadership of its then President, Underwood, called a strike against all contractors within the jurisdiction of the Local Union who were members of one or another of the said three Contractors Associations. The strike was called because the parties had been unable to negotiate a new collective bar-

gaining agreement to take the place of the agreement which expired on April 30, 1952. This strike continued until August 18, 1952, when it was terminated under the circumstances hereinafter set forth.

6. The strike affected approximately $125,000,000 worth of construction projects in the said five county area and the State of Delaware, including such projects as Airports, Pennsylvania Turnpike Extensions, the Expressway, Factories, Streets, Sewers, Highways, Subway Extensions, U. S. Housing Projects, Home Building Projects, Playgrounds and other City projects such as Schools, Churches, Refineries, Hospital Projects, U. S. Navy Projects Office Buildings and Apartment Projects, and Commercial Buildings (N. T. pp. 2925-6).

7. In addition to such losses of time and wages as were sustained by members of said Local Union, the said strike also involved approximately 8500 members of other Building and Construction Trades Unions, and resulted in a loss to them of approximately 3,000,000 man hours of work and approximately $9,000,000 of wages (N. T. pp. 2921, 2925).

8. The Building and Construction Trades Department of the American Federation of Labor is an organization consisting of 19 International Unions in the Building Trades Industry, including the International Union of Operating Engineers. The Building and Construction Trades Council of Philadelphia is an organization composed of the Philadelphia Local Unions of the various International Unions which compose the said Building and Construction Trades Department. Said Local Union 542 was and is a member of the said Building and Construction Trades Council of Philadelphia except for the period from May 28, 1951 to October 1952 (N. T. pp. 2895-6, 2901).

9. The Building and Construction Trades Council of Philadelphia enters into "Master Agreements" with General Contractors, which provide, inter alia, for prohibition against strikes by any of the local unions affiliated with the Council except when approved by the Council (N. T. pp. 2898, 3380).

10. Article 10, Section 1 of the Constitution of the Building and Construction Trades Council of Philadelphia provides:

> "Demands for increased wages or reduction of hours must be submitted to the Local Council for endorsement after approval of the National or International Union interested has been obtained, and under no consideration shall a local union or unions of any organization affiliated with this Department be allowed to inaugurate strikes, or place pickets, without the Local Council's consent." (N. T. p. 2904.)

11. Local Union 542 was disaffiliated from the Building and Construction Trades Council of Philadelphia in May 1951 because it had called a strike against the three above-mentioned Contractors Associations in violation of the above-mentioned constitutional provision (N. T. pp. 2903-4).

12. Charges of such violation of said constitutional provisions were filed against Roy J. Underwood, Gerald Leone and other then officials of Local Union 542, and at a trial upon said charges they were found guilty (N. T. p. 2910).

13. The strike in 1952, referred to in the foregoing Findings of Fact numbered 4 to 7, inclusive, was also called by Underwood and Local Union 542 without having obtained the consent either of the Building and Construction Trades Council of Philadelphia, or the Building and Construction

Trades Department of the A.F.L., or of the General President of the International Union of Operating Engineers.

14. The failure of the representatives of Local Union 542 and the three Contractors Associations to negotiate a new collective bargaining agreement prior to May 1, 1952, was due primarily to the nature of certain of the Union's contract demands the acceptance of which, without modification, was insisted upon by Underwood throughout the period of the strike.

15. Included among these demands was a demand for the adoption of a "Safety Code", for the violation of any provision of which each and all the contractor members of said three Associations were jointly and severally liable for payment of a penalty of $500, even though the violation arose from the negligent or deliberate act of a member of the Union (Exhibits D-45, P-178).

16. Included also among said demands was a demand for the payment of a pension of $100 per month to union members who met the eligibility requirements, although no actuarial study had been made by the Union nor were any data submitted to the contractors' representatives from which the cost of such a pension program could be ascertained (Exhibits D-46, P-178).

17. Neither these demands nor certain other onerous demands had been made by Underwood in his collective bargaining negotiations with other "Independent Contractors" (not members of the three above-mentioned Associations) in the area; and the contracts executed by Underwood with such other contractors as of May 1, 1952, contained no such provisions (N. T. p. 2766-9; p. 2814-20).

18. As most of the members of Local 542 were actually employed during the period of the strike by said "Independ-

ent Contractors", and were therefore not being seriously hurt by its continuance, it became evident that Underwood and his associates were not endeavoring in good faith to negotiate a contract with the Contractors Associations, but were using the strike as a method of destroying the Associations and ruining their contractor members and representatives. Underwood on various occasions revealed his intention so to do because of his enmity for the Associations and their representatives resulting from the 1951 strike and certain litigation which had then ensued (N. T. p. 1986).

19. The serious effects of the strike upon other building and construction trades unions affiliated with the Building and Construction Trades Council of Philadelphia, and upon the various contractors and contractors associations with which said Council had then existing Master Agreements, led to demands by various associations and contractors and affiliated unions upon the said Council that it take appropriate action to obtain compliance with its said Master Agreements (Exhibits P-200, P-201, D-66).

20. In an effort to obtain relief from the effects of this strike for the other unions affiliated with it and to comply with its Master Agreements with the affected contractors in the area, representatives of the Building and Construction Trades Council of Philadelphia, in July and August 1952, sought the assistance and effective action by the Building and Construction Trades Department, A. F. L., and by General President Maloney of the International Union of Operating Engineers (N. T. p. 2916-18; 3383-86).

21. Effective action by General President Maloney to procure a termination of the strike was also solicited by the Governor of Pennsylvania who, on July 17, 1952, wired Mr. Maloney as follows (Exhibit D-48):

"At the present time the Pennsylvania Department of Highways has under construction a State Highway program of $17,300,000.00 of contract value in the Philadelphia Metropolitan District of Pennsylvania comprising the Counties of Philadelphia, Delaware, Chester, Montgomery, and Bucks.

"Operations on this large program, which means so much to the transportation facilities of Philadelphia and vicinity, are tied up due to a strike against the contractors of the area by Local #542 of the Operating Engineers under the direction of Mr. Roy J. Underwood, President and Business Manager of this Local.

"There have been three strikes in this area during the past four and one-half years which coincides with the tenure of office of Mr. Underwood. The previous strikes never have had the intensity or duration comparable with the present conditions.

"We have not had similar strikes throughout Pennsylvania. A bitter feeling has been engendered between Mr. Underwood and the contractors' representatives which apparently cannot be amicably settled.

"Due to the importance of this work to the economy of our State and Nation, we are requesting that an impartial study be made by your office with a view of adjusting the differences now existing so that operations may be resumed on this construction program without further delay."

22. In an effort to settle the collective bargaining and strike issues amicably, President Maloney arranged for a conference at his office in Chicago with Underwood and with Mr. Harry Halloran, the contract negotiator for the Contractors Associations. A series of conferences ensued during the period from July 28 to July 30, 1952. These conferences resulted in an agreement for the settlement of all the major issues in dispute, leaving only a few minor points

to be worked out by further prompt negotiations or to be submitted to arbitration (N. T., p. 2034-2036; Exhibits P-43, P-49, P-52).

23. Shortly after the return of Underwood and Halloran to Philadelphia from the above-mentioned Chicago conference, a further conference was held by them pursuant to President Maloney's instructions. However, Underwood, in violation of the agreement reached in Chicago as the basis for the settlement of the issues, insisted again upon the acceptance by Halloran of all Underwood's original demands, with the result that negotiations were again deadlocked (N. T. p. 643-48).

24. At the insistence of President Maloney, Underwood conducted a meeting of the membership of Local 542 on August 5, 1952, at which he presented President Maloney's telegram (Exhibit P-43) received on that date, outlining the terms of the settlement agreement which had been reached at his office in Chicago the previous week. Underwood stated at the meeting that he could not recommend the acceptance by the membership of President Maloney's instructions as contained in the telegram. (Exhibit P-193(a), P-45).

25. On August 11, 1952, President Maloney issued an Order which was personally served on Underwood on that date at the offices of Local Union 542, directing Underwood to terminate the strike within twenty-four hours from the receipt of the letter, and instructing Underwood, the officers, committees and members of Local Union 542 to proceed promptly to consummate with the Contractors Associations, the agreement which had been made at the conference in his office in Chicago (Exhibit P-48; N. T. p. 3401-2).

26. Following the receipt of the said Order to terminate the strike, Underwood went to the office of his attorney and in collaboration with him and with certain members of the Executive Board of Local 542, drafted a Complaint which was filed and docketed in this Court early the next morning as Civil Action No. 14071, in which Underwood, as plaintiff, individually and on behalf of the officers and members of Local Union 542 charged General President Maloney, the International Union and its general officers and representatives, the three Contractors Associations, their representatives Harry R. Halloran and J. Howard McGrath, and the Building and Construction Trades Council of Philadelphia and its officers, with an illegal conspiracy to force the plaintiffs to accept a contract with the Contractors Associations against their will and inimical to their interests (Exhibits P-58; N. T. p. 653-57).

27. On the morning of the same date on which said Complaint was filed, to wit, August 12, 1952, Underwood also called a meeting of the Executive Board of Local Union 542, and at his instance the following resolution was adopted:

> "That the Business Manager proceed forthwith with any and all legal action necessary to restrain anyone from enforcing the less favorable contract on the membership of our Local Union, and that our Local Union decline to comply with the Order of General President Maloney as set forth in his letter of August 11, 1952." (Exhibits P-62(a), D-12; N. T. p. 659-664.)

28. A hearing on application for a preliminary injunction in said Civil Action No. 14071 was scheduled before Judge Allan K. Grim for August 14, 1952. Following a series of conferences between representatives of Local Union 542 and the Contractors Associations, and their respective

counsel, a Stipulation for the settlement of the issues raised by said Complaint was entered into and initialed by counsel for all parties in the case. It provided, inter alia, that all issues in dispute between Local Union 542 and the Contractors Associations should be submitted to Dr. George W. Taylor for arbitration, that the said strike should be terminated forthwith and the members of Local Union 542 should return to work, and that the Complaint and proceedings in said Civil Action No. 14071 should be marked "Dismissed with prejudice." (Exhibit P-58; N. T. p. 3328-30).

29. On August 19, 1952, President Maloney issued, and there was personally served that day on Underwood at the office of Local Union 542, the "General President's Order Invoking International Supervision Over Local Union 542 and Branches" (Exhibit P-52; N. T. p. 3102-3).

30. The said Order, inter alia, appointed Mr. Hunter Wharton as International Supervisor, and directed him

> "to administer the business and affairs thereof, and to conserve its assets to the best of his knowledge and ability and as a trust solely for the benefit of the membership to the end that the rights of members will be protected, their property safeguarded, their affairs administered with fairness and in a businesslike manner, and that the Constitution, Laws, Customs, Ritual and Authority be recognized and enforced by the membership."

The said Order further provided that it should continue in effect temporarily subject to a hearing to be held on August 26, 1952,

> "at which time and place any and all interested parties may appear and show cause why these orders should not be continued until further Order or modified." (Exhibit P-52.)

ADDITIONAL FINDINGS OF FACT APPLICABLE TO CASE OF UNDERWOOD v. MALONEY, ET AL.

31. Following the hearing on August 26, 1952 referred to in the preceding Finding of Fact, the Hearing Officer, William E. Carter, filed with the General Executive Board of the International Union formal charges against Underwood, based upon the evidence which had been developed at the hearing (Exhibit P-53).

32. Underwood was charged therein with:

(1) The deliberate defying of the constitutional authority of the General President.

(2) Circumventing the Constitution by filing a law suit when no complaint or charge had been filed within the International Union.

(3) Using the law suit as a means to charge the General President and his fellow officers with the most reprehensible, derogatory and illegal conduct, and then when full publicity had been attained in the law suit, to dismiss it with prejudice showing the utter baselessness of the allegation (Exhibit P-53).

33. A copy of the said formal charges was forwarded to Underwood with a notice that a hearing thereon would be held by the General Executive Board of the International Union on September 17, 1952 (N. T. p. 681).

34. On September 13, 1952 Underwood filed with the General Executive Board of the International Union an Answer in writing to the above mentioned charges. The said

Answer consisted of a general denial only of the specified charges and a repetition of many of the allegations which had appeared in the Complaint filed by Underwood in the above-mentioned Civil Action No. 14071 (Exhibit P-57).

35. At the said hearing the General Executive Board was presided over by Vice President Joseph J. Delaney and at all times, during both the hearing of the case and the deliberations of the General Executive Board which followed, General President Maloney refrained from voting on the matter or the giving of any recommendations thereon to the members of the General Executive Board. The charges against Underwood were read as were President Maloney's Order to terminate the strike dated August 11, 1952, and the Complaint in Civil Action No. 14071. Mr. Maloney also testified as to the efforts he had made to settle amicably the strike issues between Underwood and the Contractors Associations, and denied there was any truth to the allegations of the Complaint in Civil Action No. 14071. Underwood distributed to each of the members of the General Executive Board a copy of his Answer to the charges, and read the same at the meeting. Underwood and the members of his Executive Board who accompanied him to the hearing were given full opportunity to testify, and at the conclusion of the hearing he was asked by the Chairman whether he had any further evidence to produce and whether he was satisfied that he had had a full and fair trial. He stated there was no further evidence he wished to produce and that he was satisfied he had had a fair trial (N. T. pp. 431-5; 681-2; 2367-76; 2381-2414; 3388-12).

36. During the course of said hearing Underwood requested the right to be represented by an attorney, not a member of the Union, and requested that a stenographic record be made of the hearing. Both these requests were refused as not consonant with the long established prece-

dents of the Union based upon the provisions of its Constitution, By-Laws and Ritual (N. T. p. 3341).

37. Following the hearing the issues therein and the evidence produced were considered and discussed by the members of the General Executive Board, other than President Malony, and on September 24, 1952 its decision upon the issues was reached and filed (N. T. pp. 2417-27; Exhibit P-59).

38. The decision found Underwood guilty of the charges which had been preferred against him and guilty of violation of Article XVII, Section 3, and Article XVI, Section 1 of the Constitution of the International Union (N. T. pp. 438-51; Exhibit P-59).

39. Article XVI, Section 1 of the Constitution of the International Union provides that any member of a Local Union who publishes or circulates literature of a defamatory nature against an officer may be tried by the General Executive Board upon charges filed with it, and upon conviction may be disciplined or expelled as the General Executive Board may determine (Exhibit D-3).

40. Article XVII, Section 3 provides that:

> "No suit or other action at law or equity shall be brought in any court by any member, officer or subdivision of the International Union of Operating Engineers until and unless all rights, remedies and provisions for hearing, trial and appeal within the organization shall have been properly followed and exhausted by the member, officer or sub-division complaining. Any member violating this provision, shall, in addition to the penalties prescribed in the Constitution and Ritual, be automatically fined the full amount of the

costs incurred in the defense of any such action by the Union, together with such costs additional as the court may fix or assess against said member." (Exhibit D-3.)

41. The above provisions of Article XVII, Section 3, had been adopted by the International Union at its General Convention in 1952 upon the recommendation of its Law Committee of which Underwood was himself a member (N. T. p. 467-470).

42. In his application for membership in the Union Underwood had also specifically agreed:

"in the event of a claimed grievance against the Union to faithfully observe the procedure of and fully accept as final the findings of the Trial Boards within the Order, and I hereby expressly waive any right to institute proceedings in any court of law or equity against the Union; I further agree to conform to and abide by all laws, rules, regulations and orders stipulated in the Constitution and By-Laws, or given by those in authority." (Exhibit D-1; N. T. p. 464-5.)

43. The decision of the General Executive Board imposed upon Underwood a fine of $3500, the amount of the costs incurred by the International Union in defense of the above-mentioned Civil Action No. 14071. It also suspended Underwood from membership in the Union for a period of six years, provided, however, that conditioned upon his regularly discharging his financial obligations to the Union the suspension was to be stayed and he was to be placed on probation during said period of six years. During this period he was also barred from holding office in the Union or attending Union meetings (N. T. pp. 438-51; Exhibit P-59).

44. By letter dated September 24, 1952 Underwood was duly notified of the said decision of the General Executive Board and a copy thereof was delivered to him (Exhibit P-59; N. T. p. 435-6).

45. By letter dated September 26, 1952 (Exhibit D-14) Underwood was further notified that in accordance with the provisions of the Constitution, By-Laws and Ritual of the International Union he had the right to petition the General Executive Board for a review of the said decision. No such petition or application to the General Executive Board for a review of the said decision has at any time been filed by Underwood (N. T. p. 682-84).

46. Underwood also had the right of appeal from the decision of the General Executive Board to the General Convention of the International Union pursuant to the provisions of Article XVII, Section 2 of its Constitution. However, although Underwood was in attendance at the General Convention of the International Union held in April 1956, he made no effort to process or present at said Convention an appeal from the said Order (N. T. p. 684).

47. There is no evidence in this record to establish the allegations of the Amended Complaint to the effect that the actions of General President Maloney in the premises were the result of a conspiracy between him and employer representatives, or were taken in bad faith or for improper or illegal purposes.

48. The evidence establishes the facts (a) that the charges against Underwood were justified by his conduct; (b) that he was guilty as charged; (c) that he was afforded a full and fair trial which accorded with all the requirements of due process, and (d) that the said decision of the

General Executive Board upon the evidence produced at the said trial was rendered in good faith, free from any domination, coercion or control by President Maloney.

ADDITIONAL FINDINGS OF FACT APPLICABLE TO THE CASE OF DAWSON, ET AL. v. MALONEY, ET AL.

49. Article VI, Section 3 of the Constitution of the International Union gives the General President:

> "* * * power to direct and supervise all Local Unions, Local Officers and any other subdivision of the International Union and members. Whenever in his opinion the best interests of the organization require it, or Local Unions, Local Officers and any other subdivision of the International Union or members shall be deemed by him to be incompetent, negligent, or to have failed in carrying out their respective duties, or to have violated the Ritual, Obligation, laws, rules or decisions of the organization or its duly constituted authorities, or shall have full power to suspend or remove such individual members, suspend or remove such Local officers, suspend or revoke charters of such Local Unions or place such Local Unions and their officers and members under International supervision. * * *" (Exhibit D-3)

50. In addition to the reasons for invoking supervision over Local Union 542 set forth in the Order (Exhibit P-52), this action was taken by General President Maloney because:

> (1) The Local Union under Underwood repeatedly engaged in work stoppages in violation of National agreements which had been negotiated by the Inter-

national Union, and master agreements negotiated by the Building and Construction Trades Council.

(2) The Local Union had purported to elect Underwood and other officers for a four year term without obtaining the consent of the General President or following the procedure set forth in the Constitution and By-Laws.

(3) The Local Union had engaged in controversies with the Building and Construction Trades Council of Philadelphia which led to its disaffiliation from that organization.

(4) He had been informed that the Union's affairs were being run by lawyers instead of the Local Union officials.

(5) The refusal of Underwood and the Local Union to obey the General President's Order of August 11, 1952 to terminate the strike.

(6) The conduct of Underwood and the Local Union in attempting to obtain direct action from the War Labor Board without filing the applications through the General Office of the International Union.

(7) The institution by Underwood and the Local Union of Civil Action No. 14071.

(8) The failure of Underwood and the Local Union to comply with the Order of the International Union to disband internal clubs such as the Triangle Club.

(9) The employment of members of the Maritime Union to act as pickets during the strike.

(10) The failure of Underwood and his assistants to bargain with the Contractors' representatives in good faith, and his expressed determination to use the strike to break the Associations. (N. T., pp. 1944-86.)

51. There is no evidence in this record to establish the allegations of the Amended Complaint to the effect that the Order to terminate this strike, or the Order invoking super-

vision, or any other action taken by General President Maloney in the premises was motivated by a conspiracy between him and employer representatives, or was taken in bad faith or for improper or illegal purposes.

52. In accordance with the said Order Invoking Supervision (Exhibit P-52), a hearing thereon was held and conducted by William E. Carter, the duly appointed Hearing Officer, at the offices of the International Union in Washington on August 26, 1952. It was attended by Underwood accompanied by a number of his Business Agents and members of the Local Executive Board (N. T., pp. 403-06; 3330-33).

53. At the hearing the Order of August 19, 1952, invoking supervision was read and the Hearing Officer asked Underwood and his associates to present any evidence they desired with respect to the matter. Underwood spoke with respect to various aspects of the strike and the reasons for the institution of Civil Action No. 14071. He then demanded that a stenographic record be made of the hearing, and refused to answer any questions or take any further part in the proceedings unless that was done. Several of his associates then made statements concerning various aspects of the matter. Underwood and his associates were asked by the Hearing Officer whether they had any further testimony of any nature to offer, and there being none, the hearing was concluded (N. T., pp. 403-06; 3330-33; Exhibit D-68).

54. Following the hearing a report thereof was filed with the General President by Hearing Officer Carter. After reviewing the testimony presented, he concluded that Underwood was unwilling to make full disclosure at the hearing, that his conduct indicated a callous indifference to his constitutional responsibilities, that under his leadership of

Local Union 542 its business and affairs would continue to be operated as though it were a wholly autonomous organization in violation of the constitution and its obligations thereunder to the International Union, to the Building and Construction Trades Council of Philadelphia, and to the Building and Construction Trades Department of the American Federation of Labor (Exhibit D-68; N. T., pp. 3330-33; 3355-66).

55. On September 13, 1952 Underwood filed a written appeal from the said Order Invoking Supervision (Exhibit P-54).

56. By letter dated December 30, 1952 the plaintiffs and members of Local 542 were notified that the appeal from the Order Invoking Supervision would be heard by the General Executive Board at its meeting to be held at Miami Beach, Florida, on February 10, 1953 (Exhibit D-16).

57. In reply to a request from counsel for the plaintiffs that the appeal be considered by the General Executive Board at a location nearer Philadelphia than Florida, plaintiffs were advised through counsel that if a specific request to that effect were addressed to the General Executive Board, action thereon would be taken at the scheduled regular meeting of the said Board on February 10, 1953 (Exhibit D-17).

58. No such request was made by or on behalf of plaintiffs and no one appeared on behalf of plaintiffs at the scheduled meeting before the General Executive Board on February 10. The appeal was thereupon continued as a pending case by action of the General Executive Board for the purpose of giving proponents of the appeal further opportunity to be heard thereon and for the purpose of thor-

oughly investigating the issues involved therein (N. T., pp. 696; 3335).

59. Except for the initial step of filing the appeal from the Order of August 19, 1952 invoking supervision over Local Union 542, and attendance at the hearing thereon on August 26, 1952, no further effort was made by plaintiffs or any one on their behalf to process said appeal or pursue or exhaust any of their other remedies in the matter, as provided by the Constitution of the International Union (N. T., pp. 3335-38).

60. On February 26, 1953, General President Maloney appointed an Interim Hearing Board with instructions to hold hearings where members of Local 542 could appear and testify with respect to the creation and adoption of approved By-Laws for Local Union 542, and other matters connected with the welfare of the membership of the Local, including International supervision (Exhibit D-62).

61. On June 11, 1953 the Interim Hearing Board caused to be forwarded to each of the members of Local Union 542 a notice of the time and place for the holding of hearings by the Board in the cities of Wilkes-Barre, Reading, Harrisburg and Philadelphia, and Wilmington, Delaware (Exhibit D-64).

62. At a meeting of the General Executive Board held on July 30, 1953 the Interim Hearing Board filed its First Partial Report of its hearings. It reported that approximately 500 members of Local 542 had appeared and testified at the hearings. The Board also reported that in addition, many hundreds of individual letters had been received by it from members of the Union, and many who were unable to be present at the hearings telephoned their views and otherwise communicated them to Board members, with the re-

sult that the Board concluded the members of Local 542 were practically unanimous in the proportion of 100 to 1, in opposing a return to Local autonomy as it had been administered by the Underwood faction in the Local Union (Exhibit D-64).

63. The said Report of the Interim Hearing Board also concluded that the testimony established that International supervision had been imposed as a necessary emergency; that it resulted in putting the members back to work and ending the strike; that it healed the Local's relations with the American Federation of Labor, and with the Building Trades Council of Philadelphia; that it promoted public good will; secured the negotiation of good contracts; amalgamated the Welfare Funds; and that the record of the administration of business in the Local Union under International supervision established in many ways how the membership had been helped and how conditions had been improved. The Report also recommended that procedure be established for the formulation and adoption of By-Laws for Local Union 542 in accordance with the provisions of the Constitution (Exhibit D-64).

64. On May 2, 1956, an Order was entered by this Court, following a pre-trial conference, directing that

> "* * * plaintiffs within fifteen days from the date of this Order, identify the specific members of the Union, by name, whom plaintiffs allege constitute the representative group in the class action. The said definite identification to be those members whom plaintiffs at trial will contend constitute the class representation. In the event that plaintiffs fail within the specified time to furnish the above stated information, the court will consider at time of trial, for the purpose of determining class representation only, the named plaintiffs, under

the applicable Rule governing proof of adequate class representation set forth in the case of Giordano vs. Radio Corporation of America, 183 F. 2d 558 (3d Cir. 1950)."

65. The plaintiffs have not at any time, pursuant to the above-mentioned Order or otherwise, revealed to the defendants or otherwise identified the members of Local Union 542 alleged to be represented by them in this litigation.

66. The plaintiffs do not represent nor can they fairly insure the adequate representation of all the members of Local Union 542 and its Branches, as alleged in the Complaint.

67. There is no evidence in this record from which there could be identified any members of Local 542, other than the named plaintiffs, as constituting a class in sympathy with the objectives and relief praved for by the plaintiffs in this litigation.

CONCLUSIONS OF LAW.

1. The constitution and by-laws of a union constitute the compact which binds its members together and the law by which they are to be governed.

Williams v. Masters, Mates & Pilots, 384 Pa 413 (1956).

2. The provisions and procedure of the Constitution, By-Laws and Ritual of the International Union of Operating Engineers with respect to the rights and remedies of members to present grievances and petition for review of and appeal from decisions and actions of its officers and tribunals are fair and equitable and in full accord with the requirements of due process.

3. The actions and decisions of General President Maloney and of the General Executive Board of the International Union complained of in these actions, were taken in good faith and pursuant to the authority vested in them respectively, and the practice and procedures established by the Constitution, By-Laws and Ritual of the International Union.

4. The remedies afforded by the constitution and by-laws of a union must be exhausted before the courts will entertain jurisdiction to determine the regularity of an action by those authorized by the constitution and by-laws to pass upon accusations against a member or officer.

Bogadek v. Butkovic, 336 Pa. 284 (1939).

5. Where the proceedings of the organization have been regular, fair and free from fraud, and the party whose rights are involved has been given an opportunity to appear and be heard, the courts will not inquire into the merits of the case nor review the action of the union authorities.

Bogadek v. Butkovic, 336 Pa. 284 (1939).

6. The refusal by a properly authorized union tribunal to permit an accused to be represented before it by counsel who is not a member of the union, does not render the proceedings or decision of such tribunal unfair or in conflict with the requirements of due process.

Raynovic v. Vrlinic, 334 Pa. 529 (1939);
Tisa v. Potofsky, 90 F. S. 175 (1950).

CONCLUSIONS OF LAW APPLICABLE TO THE CASE OF UNDERWOOD v. MALONEY, ET AL.

7. The issuance by General President Maloney of his Order dated August 19, 1952, invoking supervision over Local Union 542, was a proper exercise of the authority vested in him by the International Constitution.

8. The institution by Underwood of Civil Action No. 14071 and the charges of conspiracy and other improper and illegal conduct made by him in that case against the General Officers of the International Union, without any effort on his part to pursue the remedies within the Union Constitution, was a clear and deliberate violation of the Constitution and of his express written agreement contained in his Union membership application.

9. The filing of the charges against Underwood, the notice to him of the hearing thereon before the General Executive Board, the conduct of said hearing, the opportunities afforded him to present his defense at said hearing, and the decision rendered by the General Executive Board, were all in conformity with the procedure established therefor by the Constitution of the International Union.

10. The inclusion in the penalties imposed by said decision of the fine of $3500 was mandatory under the express provisions of Article XVII, Section 3 of the said Constitution; and the other penalties imposed thereby were within the proper exercise of the discretion vested by the Constitution in the General Executive Board.

11. Underwood failed to exhaust his remedies under the Constitution for the review of the said decision of the General Executive Board and appeal to the General Convention of the International Union, and is therefore estopped from maintaining this action.

12. The institution by Underwood of this action, docketed as Civil Action No. 14398, was a violation of his obligations under the provisions of Article XVII, Section 3, Article XVI, Section 4, and Article XXIII, Subdivision 7, Section (e) of the International Constitution, and a violation of his express covenant not to sue contained in his membership application.

13. The defendants in Civil Action No. 14398 are entitled

to the entry of judgment in their favor against the plaintiff Underwood.

CONCLUSIONS OF LAW APPLICABLE TO THE CASE OF DAWSON, ET AL. v. MALONEY, ET AL.

14. The issuance by General President Maloney of his Order of August 19, 1952 invoking supervision over Local Union 542, was a proper exercise of the authority vested in him by the International Constitution.

15. The provisions of the Constitution of the International Union pursuant to which said Order of General President Maloney was issued, are proper, valid and enforceable, and are not in conflict with public policy or with any provision of the Constitution or laws of the United States or of the Commonwealth of Pennsylvania.

16. The holding and conduct of the hearing before Hearing Officer Carter on August 26, 1952, with respect to the said Order invoking supervision over Local 542, the opportunities afforded to the plaintiffs in Civil Action No. 14547 to testify and present any evidence available to them as to the issues involved, and the conclusions and report of the Hearing Officer thereon were in conformity with the procedure established by the Constitution of the International Union and with the requirements of due process.

17. Plaintiffs in Civil Action No. 14547 failed to pursue or exhaust their remedies under the said Constitution for the appeal from General President Maloney's said Order to the General Executive Board and thereafter to the General Convention of the International Union, and they are therefore estopped from maintaining this action.

18. The institution by plaintiffs of Civil Action No. 14547 was a violation of their obligations under the provisions of Article XVII, Section 3, Article XVI, Section 4, and Article XXIII, Subdivision 7, Section (e) of the International Con-

stitution, and a violation of their express covenants not to sue contained in their Union membership applications.

19. The plaintiffs in Civil Action No. 14547 do not represent nor can they fairly insure the representation of all the members of Local Union 542 and its Branches, as alleged in the Complaint.

20. Such members of Local Union 542 and its Branches as may have been or may be in sympathy with the objectives and relief prayed for by plaintiffs in Civil Action No. 14547, do not constitute such a class as may support a true class action, as such alleged class is too ill defined and ephemeral in makeup.

Giordano v. Radio Corporation of America, 183 F. 2d 558.

21. The defendants in Civil Action No. 14547 are entitled to the entry of judgment in their favor against the plaintiffs.

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(60) RULINGS ON DEFENDANT'S REQUESTS.

As to the defendant's requests, Nos. 1, 2, 3, 4, 5 and 6 are affirmed.

No. 7 is refused as stated.

Nos. 8, 9 and 10 are affirmed.

No. 11 is denied.

No. 12 is refused as stated.

Nos. 13 to 49 inclusive are affirmed.

No. 50 is affirmed, eliminating and excluding subparagraph 2.

Nos. 51 and 52 are affirmed.

No. 53 is refused as stated.

No. 54 is affirmed, with the addition of the name Carter after the word "he" at the beginning of the (61) second sentence.

No. 55 is affirmed.

No. 56 is refused as stated.

Nos. 57 to 61 inclusive are affirmed.

No. 62 is denied.

No. 63 is refused as stated.

Nos. 64 and 65 are affirmed.

Nos. 66 and 67 are denied.

As to the requests for conclusions of law, No. 1 is affirmed.

No. 2 is affirmed, with the addition of the following words, "as construed by the Court in its opinion." It refers back to the constitution.

Nos. 3 and 4 are refused as stated.

Nos. 5 through 10 inclusive are affirmed.

No. 11 is denied.

No. 12 is refused as stated.

Nos. 13 and 14 are affirmed.

No. 15 is affirmed, with the addition of the same words, "as construed by the Court in its opinion."

Nos. 16 and 17 are denied.

No. 18 is refused as stated.

Nos. 19, 20 and 21 are denied.

* * * * * * * * * *